UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT. Direct Referral in Connection with the E-Z Chemical Site, Philadelphia, Philadelphia County, Pennsylvania

DATE: AUG 2 7 1993

FROM: Marcia E. Mulkey MEM
Regional Counsel (3RC00)

Thomas C. Voltaggio
Director, Hazardous Waste Management Division (3HW00)

TO: Stanley L. Laskowski
Acting Regional Administrator (3RA00)

Attached please find a Litigation Report in support of our recommendation that a complaint be filed on or before September 28, 1993 against the proposed defendants identified below under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9607(a), and the Declaratory Judgement Act, 28 U.S.C. § 2201. In addition, we recommend that an action for penalties and damages be filed against one proposed defendant under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). We specifically recommend that DOJ file an action for 1) penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), against Mr. Leonard Goldfine who failed to obey an administrative order issued by EPA under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a); 2) under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), against 15 proposed defendants, for recovery of costs incurred by EPA in responding to the release and threatened release of hazardous substances at or from the E-Z Chemical Site (the "Site") into the environment; 3) for punitive damages under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), against Mr. Goldfine for failure to obey the administrative order described above; and 4) for a declaratory judgement under Section, 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and the Declaratory Judgement Act, 28 U.S.C. § 2201, for further liability. This case is referred directly to DOJ in accordance with "Expansion of Direct Referral cases to the Department of Justice" (Thomas L. Adams, Jr., dated January 14, 1988). A brief summary of the Litigation Report is as follows:

Nature of the Case: This is an action to recover costs of approximately $3,293,583.83 expended for an emergency removal action undertaken by EPA at the Site and for a declaratory judgement for liability associated with further enforcement costs to be expended. In addition, the action is one for penalties

under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), in an amount of $5,825,000, and for damages under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), in an amount of approximately $750,000 against one proposed defendant who failed to obey an EPA Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), administrative order.

The Site is located in Philadelphia, Philadelphia County, Pennsylvania and consists of an approximately 1.5-acre tract of land located in an urban area. E-Z Chemical Company operated a drum and chemical re-packaging plant and a chemical storage facility. The Site was determined to pose a threat of fire and explosion. An emergency removal action was conducted at the Site by EPA between April 7, 1989 and September 28, 1990. The removal action consisted of stabilizing the Site and then disposing of approximately 10,000 drums, approximately 10,000 laboratory containers, tank contents, and debris, can do they material containing hazardous substances. On January 12, 1990, EPA issued a unilateral administrative order to Mr. Leonard Goldfine to take over a portion of the remaining work at the Site. Mr. Goldfine did not comply with the order and EPA completed all aspects of the remaining work.

Proposed Defendants: We recommend that this action be filed against the defendants listed and described in the litigation report.

Proposed Relief: We recommend that DOJ file an action under Section 107 of CERCLA, 42 U.S.C. § 9607, against 15 proposed defendants, for recovery of at least $3,293,583.83 and for declaratory judgement to address further liability. In addition, we recommend that DOJ file an action under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for penalties in an amount of $5,825,000, and under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for damages in an amount of approximately $3,290,312.61 against Mr. Goldfine.

Significant issues:

(1) In this Litigation Report, Region III has referred a CERCLA Section 106(b) penalty action and a CERCLA Section 107(c)(3) punitive damages claim.

(2) Robert Caron was on the Site as a Guardian Environmental Services Inc. employee (EPA's main cleanup contractor at the Site).

(3) One of the proposed generator defendants is liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(9(3), as a party who by having entered into a chemical manufacturing formulation agreement with E-Z Chemical Company arranged for disposal or treatment or hazardous substances. United States v. Aceto Agricultural Chemicals Corp., 872 F.2d 1373 (8th Cir. 1989). In addition, several other proposed generator defendants are liable by extending the Aceto theory from formulation of a

product to the 'blending', 'repackaging', 'drumming' and/or 'diluting' of a substance.

Regional Contact Person:

Legal:

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Senior Assistant Regional Counsel
(215) 597-9951

Technical:

Jerry Curtin (215) 597-8218
Michelle Rogow (215) 597-9362
Cost Recovery Section (3HW12)
Hazardous Waste Management Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT: Civil Referral Under CERCLA Sections 106(b), 107(a) and 107(c)(3) for the E-Z Chemical Site, Philadelphia, Philadelphia County, Pennsylvania

DATE: AUG 27 1993

FROM: Stanley L. Laskowski
Acting Regional Administrator (3RA00)

TO: Steven A. Herman
Assistant Administrator for Enforcement (LE-133)

The attached Litigation Report is being referred to the Department of Justice with a recommendation that a civil action be filed for 1) penalties under Section 106(b) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(b); 2) for recovery of costs under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); 3) for punitive damages under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3); and 4) for a declaratory judgment for further liability under CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2); and 28 U.S.C. § 2201. This action is to collect penalties of $5,825,000, damages of approximately $750,000 and to recover past costs of approximately $3,293,583.83.

Please refer the Litigation Report for more detailed information on this case. The Regional Counsel attorney assigned to this case is Lydia Isales at (215) 597-9951.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

Honorable Myles E. Flint
Acting Assistant Attorney General
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
Ben Franklin Station
P.O. Box 7611
Washington, D.C. 20044

AUG 2 7 1993

Re: Direct Referral of Civil Litigation in Connection with the E-Z Chemical Site

Dear Mr. Flint:

Attached please find a Litigation Report in support of our recommendation that a complaint be filed on or before September 28, 1993, against the proposed defendants identified below under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9607(a), and the Declaratory Judgement Act, 28 U.S.C. § 2201. In addition, we recommend that an action for penalties and damages be filed against one proposed defendant under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). We specifically recommend that DOJ file an action for 1) penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), against Mr. Leonard Goldfine, who failed to obey an administrative order issued by EPA under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a); 2) under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), against 15 proposed defendants, for recovery of costs incurred by EPA in responding to the release and threatened release of hazardous substances at or from the E-Z Chemical Site (the "Site") into the environment; 3) for punitive damages under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3) against Mr. Goldfine for failure to obey the administrative order described above; and 4) for a declaratory judgement under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and the Declaratory Judgement Act, 28 U.S.C. § 2201, for further liability. This case is referred directly to DOJ in accordance with "Expansion of Direct Referral cases to the Department of Justice" (Thomas L. Adams, Jr., dated January 14, 1988). A brief summary of the Litigation Report is as follows:

Nature of the Case: This is an action to recover costs of approximately $3,293,583.83 expended for an emergency removal action undertaken by EPA at the Site and for a declaratory judgement for liability associated with further enforcement costs to be expended. In addition, the action is one for penalties

under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), in an amount of $5,825,000, and for damages under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), in an amount of approximately $750,000 against one proposed defendant who failed to obey an EPA Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), administrative order.

The Site is located in Philadelphia, Philadelphia County, Pennsylvania and consists of an approximately 1.5-acre tract of land located in an urban area. E-Z Chemical Company operated a drum and chemical re-packaging plant and a chemical storage facility. The Site was determined to pose a threat of fire and explosion. An emergency removal action was conducted at the Site by EPA between April 7, 1989 and September 28, 1990. The removal action consisted of stabilizing the Site and then disposing of approximately 10,000 drums, approximately 10,000 laboratory containers, tank contents, debris, and others materials containing hazardous substances. On January 12, 1990, EPA issued a unilateral administrative order to Mr. Leonard Goldfine to take over a portion of the remaining work at the Site. Mr. Goldfine did not comply with the order and EPA completed all aspects of the remaining work.

Proposed Defendants: We recommend that this action be filed against the defendants listed and described in the litigation report.

Proposed Relief: We recommend that DOJ file an action under Section 107 of CERCLA, 42 U.S.C. § 9607 against 15 proposed defendants, for recovery of at least $3,293,583.83 and for declaratory judgement to address further liability. In addition, we recommend that DOJ file an action under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for penalties in an amount of $5,825,000, and under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for damages in an amount of approximately $750,000 against Mr. Goldfine. EPA requests that DOJ provide the recommended defendants with notice, opportunity to settle demand for costs and discussion of Robert Caron involvement at the Site.

Significant issues:

(1) In this Litigation Report, Region III has referred a CERCLA Section 106(b) penalty action and a CERCLA Section 107(c)(3) punitive damages claim.

(2) Robert Caron was on the Site as a Guardian Environmental Services Inc. employee (EPA's main cleanup contractor at the Site).

(3) One of the proposed generator defendants is liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(9(3), as a party who by having entered into a chemical manufacturing formulation agreement with E-Z Chemical Company arranged for disposal or treatment or hazardous substances. United States v. Aceto Agricultural Chemicals Corp., 872 F.2d 1373 (8th Cir.

1989). In addition, several other proposed generator defendants are liable by extending the Aceto theory from formulation of a product to the 'blending', 'repackaging', 'drumming' and/or 'diluting' of a substance.

Regional Contact Person:

Legal:

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Senior Assistant Regional Counsel
(215) 597-9951

Technical:

Jerry Curtin (215) 597-8218
Michelle Rogow (215) 597-9362
Cost Recovery Section (3HW12)
Hazardous Waste Management Division

Sincerely,

Stanley L. Laskowski
Acting Regional Administrator

Enclosure

CIVIL LITIGATION REPORT
E-Z CHEMICAL SITE
PHILADELPHIA, PHILADELPHIA COUNTY, PENNSYLVANIA

CONFIDENTIAL: THIS DOCUMENT IS AN ATTORNEY WORK PRODUCT AND WAS PREPARED IN ANTICIPATION OF LITIGATION. DO NOT RELEASE UNDER THE FREEDOM OF INFORMATION ACT.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

EASTERN DISTRICT OF PENNSYLVANIA

REGIONAL CONTACTS:

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Philadelphia, PA 19107

Lydia Isales, (3RC20), (215) 597-9951
Office of Regional Counsel
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107

Recommended Defendants: See Page i

Date of Referral: [redacted] 2, 1995

TABLE OF CONTENTS

RECOMMENDED DEFENDANTS

OWNER/OPERATORS

1. E-Z Chemical Company
2. 950 Canal Street Corporation
3. Leonard Goldfine
4. Laurel Street Corporation
5. Packaging Terminals, Inc.
6. Francis X. Seklecki
7. Edmund Zakrocki, Jr.

GENERATORS

8. Chemline Corporation
9. Chemsource, Inc.
10. Delmarva, Incorporated/Chemical
11. Environmental Chemical Associates, Incorporated
12. Globe Paper Company, Inc.
13. J.M.B. Industries, Inc. (U.S.)
14. Kessler Chemical Company
15. Morgan Materials, Incorporated

I. CASE SYNOPSIS

This is a Referral (Litigation Report) under Sections 106(b), 107(a) and 107(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(b), 9607(a) and 9607(c)(3).[1] The first claim is for penalties in the amount of $5,825,000, against one party (Mr. Leonard Goldfine) for failure to comply with a Unilateral Administrative Order ("Order"), issued by the United States Environmental Protection Agency, Region III ("EPA") pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), for performance of a portion of a removal action at the E-Z Chemical Site ("Site"). The second claim is for recoupment of approximately $3,293,583.83 from 15 potentially responsible parties with respect to monies spent by EPA at the E-Z Chemical Site. It includes a count for a declaratory judgment on further liability under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2) and the Declaratory Judgment Act, 28 U.S.C. § 2201. The third claim is for treble damages in the amount of approximately $750,000 (see Section II.D) against Mr. Leonard Goldfine for costs incurred by the Superfund because of his failure to comply with the Order.

The E-Z Chemical Site is located at 48-60 Laurel Street in Philadelphia, Philadelphia County, Pennsylvania (Attachment 1, Appendix A). The E-Z Chemical Company operated primarily as a drum and chemical re-packaging plant and a chemical storage facility. It is approximately 1.5 acres in size, located in an urban area. Adjacent to the site, to the southeast, is a meat packing/processing plant and an apartment complex is located approximately two blocks to the south. The elevated train line and Interstate Highway 95 are located two blocks from the Site and a bus/limousine service is adjacent on the west. (Attachment 1, Appendix B, Special Bulletin).

On April 4, 1989, EPA recorded an "Incident Notification Report" from the City of Philadelphia Fire Department noting a potential of threat of fire and explosion at the Site (Attachment 2). The Fire Department requested that EPA conduct an inspection of the Site. Such inspection was conducted on April 5, 1989 (Attachment 3), along with the Fire Department, the City of Philadelphia Fire Marshal's Office, the City of Philadelphia Department of Licenses and Inspections and other city departments. After the inspection, the City of Philadelphia Department of Licenses and Inspections served E-Z Chemical Company with a Cease, Desist and Evacuate Order (Attachment 4, Sec. I, No. 1).

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[1] An investigation of the potential RCRA violations associated with the facility is being undertaken by EPA, Region III. However, due to the CERCLA statute of limitations (See Section II.A.), Region III is recommending that this CERCLA action be filed on or before September 28, 1993.

On April 7, 1989, the Acting Regional Administrator approved the expenditure of $250,000 to commence emergency removal actions at the Site (Attachment 1, Appendix B, Special Bulletin) because of the conditions observed at the Site on April 5, 1989. The Site's perimeter was bound by a chain link fence which had fallen down along the southwestern property line. Haphazard storage of approximately 2,000 drums and deteriorated fiber, plastic and metal containers were observed which contained industrial products or wastes. Drum labels indicated that incompatible materials were present without proper segregation. These incompatible materials included but were not limited to: ethyl ether, monochlorobenzene, trichlorobenzene, phenol, sulfuric acid, ethylene dichloride, ortho-dichlorobenzene, methylene chloride, trichloroethane, toluene, benzene and methyl ethyl ketone (MEK) (all hazardous substances under CERCLA). Areas of spillage and leaking containers were observed and documented. Thirty-four storage tanks were identified; eight tanks were empty, the remaining twenty-six contained solvents, corrosives or plasticizers. On the southwestern end of the property a large bulk liquid storage tank (approximately 70 ft high x 60 ft diameter) served as a warehouse for a large number of damaged drums and containers some of which contained liquids and solid chemicals of an undetermined identity. Access into the tank was through a hole cut into the side of the large tank, large enough for a 5 ton truck to drive through. EPA commenced operations on the same day (Attachments 1 (Appendix B, Special Bulletin); 5 (POLREP 2) and 6).

On April 19, 1989, the Acting Regional Administrator approved $1,701,500 additional funding for the Site (Attachment 1, Appendix B, April 19, 1989 memo). On December 7, 1989, EPA Headquarters approved raising the total project ceiling to $2,993,000 and granted an exemption to the $2 million and 12 month limitations of Section 104(c) of CERCLA, 42 U.S.C. § 9604(c), (Attachment 1, Appendix B, Dec. 1, 1989 Transmittal Memo). On April 25, 1990, EPA Headquarters approved increasing the total project ceiling to $3,488,061 and again granted the exemptions noted above (Attachment 1, Appendix B, April 19, 1990 Addendum Memo). EPA's removal action consisted of stabilizing the Site and then disposing of "2188 product drums, 6268 empty drums, 789 bulked labpack containers, and 23.25 gallons of undrummed liquid. Owners/manufacturers reclaimed 1299 drums of product, 164 empty drums, 77,286 gallons of undrummed liquid, 39 tons of undrummed solids and 7 totes of dispersant." (See Attachment 1, Section on 'Fact Sheet' and Appendix B, April 19, 1990 memo). EPA completed the removal action at the Site on September 28, 1990 (Attachment 5, (POLREP 266)).

Laurel Street Corporation and 950 Canal Street Corporation are title holders to the two parcels of land (designated as "B" and "C") respectively which comprise the Site (Attachments 7 and 8). Leonard Goldfine was the sole stockholder, director and

officer of both companies between 1977 and 1987 (Attachment 4, Sec. III. No. 12). Packaging Terminals, Inc. was a tenant between May 1985 and October 1986 and E-Z Chemical Company was a tenant from October 1986 until at least March 1987 on the "B" and "C" parcels (Attachment 4, Sec. III. No. 12). Both operated a business involving the selling, buying, blending, packaging and storing of chemicals of various kinds. City of Philadelphia Department of Licenses and Inspections records reveal numerous occurrences of spills and/or releases of chemicals at the Site during the time both companies leased the property (Attachments 4 (Section III, Nos. 18-30) and 9). Edmund Zakrocki, Jr. is the President of E-Z Chemical Company (Attachment 4, Sec. III No. 12). In March 1987, E-Z Chemical Company and Mr. Zakrocki purchased all of the outstanding shares of Laurel Street and 950 Canal Street Corporations (Attachment 4, Sec. III. No. 12).

In 1989-1990, EPA's responsible party search involved sending CERCLA Section 104(e) letters to 82 companies and individuals. However, the companies/individuals that were identified at that time were believed to have used E-Z Chemical solely as a storage facility and were determined not to be responsible parties (See Section XIII.A.5.a. on anticipated defense). During the removal action, EPA allowed and arranged for approximately 24 companies/individuals to remove their useable products from the site (Attachment 1, Appendix B, April 19, 1990 Addendum Memo, see Enforcement Confidential memo, pg. 2 and Section V, tables). EPA provided notice of potential liability to E-Z Chemical and Edmund Zakrocki orally on April 6, 1989 (Attachment 5, POLREP 1) and in writing, by letter dated April 18, 1989, and to Mr. Goldfine by letter dated September 7, 1989 (Attachment 4, Sec. III., Nos. 10 and 13).

On January 12, 1990, EPA issued the Order to Mr. Zakrocki and E-Z Chemical Company for access and to Mr. Goldfine for performance of a portion of the remaining removal action (Attachment 6). Specifically, EPA ordered Mr. Goldfine to hire a contractor and arrange for the removal, transportation and disposal of all bottles, containers, vessels or other receptacles containing hazardous substances, pollutants or contaminants which were located on the second floor of the building on the Site and scattered throughout ("laboratory chemicals"). EPA estimated that about 10,000 such containers of laboratory chemicals remained on Site (Attachment 6, Section VIII, Paragraph 8.2 and 8.5). Mr. Goldfine did not comply with the Order and EPA completed all aspects of the removal action.

In May 1993, EPA continued the responsible party search. EPA sent out 54 additional CERCLA § 104(e) letters between May and July 1993. Based on EPA's responsible party search, EPA requests that a cost recovery action under Section 107(a) of CERCLA, 42 U.S.C. § 9607, be filed against the following parties, in the amount of approximately $3,293,583.83 in addition to a

declaratory judgment for future liability under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2): E-Z Chemical Company, 950 Canal Street Corporation, Leonard Goldfine, Laurel Street Corporation, Packaging Terminals, Inc., Francis X. Seklecki, Edmund Zakrocki, Jr. (owner/operators); and Chemline Corporation, Chemsource, Inc., Delmarva, Incorporated/Chemical, Environmental Chemical Associates, Incorporated, Globe Paper Company, Inc., J.M.B. Industries, Inc. (U.S.), Kessler Chemical Company, and Morgan Materials, Incorporated (generators).

In addition, EPA requests that an action for penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), in the amount of $5,825,000 and an action for punitive damages under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), in the amount of approximately $750,000 be filed against Mr. Leonard Goldfine for failure to comply with the Order. EPA requests that DOJ send notice of potential liability (as appropriate), demand for costs and opportunity to settle, and notice of Robert Caron involvement at the Site, to the parties identified above prior to filing the action.

I. STATUTORY BASES OF REFERRAL

A. Applicable Statutes

1. Recovery of Costs/Establishment of Liability

   (a) Section 107 of CERCLA, 42 U.S.C. § 9607

2. Imposition of Civil Penalties/Establishment of Liability

   (a) Section 106(b) of CERCLA, 42 U.S.C. § 9606(b)

   and

   (b) Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a)

3. Punitive Damages/Establishment of Liability

   (a) Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3); and

   (b) Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a)

4. Declaratory Judgment for Future Liability

(a) Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2); and

(b) Declaratory Judgment Act, 28 U.S.C. § 2201

B. Jurisdiction and Venue

With certain exceptions not relevant here, Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), provides that United States District Courts shall have exclusive original jurisdiction over all controversies arising under CERCLA, without regard to citizenship of the parties or the amount in controversy.

Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), provides that venue shall lie in any district in which the release or damages occurred, or in which the defendant resides, may be found, or has a principal office. The release and damages with regard to the E-Z Chemical Site occurred within the geographical limits of the Eastern District of Pennsylvania. Venue thus properly lies in that district.

III. SIGNIFICANCE OF REFERRAL/SPECIAL ISSUES

A. Statute of Limitations

Section 113(g)(2)(A) of CERCLA, 42 U.S.C. § 9613(g)(2)(A), provides in relevant part, that a cost recovery action must be brought within 3 years after completion of the removal action. The emergency removal action at the Site was completed on September 28, 1990 (Attachment 5, (POLREP 266)), thus Region III requests that the Department of Justice (DOJ) file this action on or before September 28, 1993.

A review of the Pollution Reports for the Site authored by the On-Scene-Coordinators (OSCs), reveals nearly continuous EPA presence[2] at the Site from the commencement of the removal action until May 31, 1990. (Attachment 5). POLREPs #262 (May 30, 1990) and 263 (May 31, 1990) reveal plans to attempt to "demobilize" the Site by June 1, 1990. The OSC Report (Attachment 1, Section V) indicates demobilization of equipment began May 31, 1990 and was completed June 6, 1990. The next POLREP (#264) is dated August 24, 1990 and indicates "removal actions are completed with the exception of the remaining

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[2] EPA's presence at the Site was generally 4 or 5 days/week. However, EPA did need to demobilize the Site and stop Site operations between November 10, 1989 and December 18, 1989 while awaiting approval of the funding increases (Attachment 5, see POLREPS 167, 168 and 169) and between March 30, 1990 and May 1, 1990 for the same reason (Attachment 5, POLREPS 240 and 242).

disposal of 19 drums and one laboratory packed container". POLREP #265 is dated September 7, 1990 and indicates "removal actions are completed with the exception of the remaining disposal of 10 hazardous waste sludge drums, 7 drums of waste paint product and 1 acid drum". POLREP #266 reveals that on September 28, 1990, final disposal of those materials and final demobilization occurred. It is possible that the recommended defendants will attempt to argue that because EPA continuous presence ended at the Site on May 31, 1990, demobilization began and only final disposal of a small number of materials remained on that date, that the proper statute of limitations 3 year period for the removal action should be calculated from May 31, 1990 and is thus passed. They may argue that the correct date is June 6, 1990 because the OSC Report (Attachment 1, Section VI) notes that on said date all remaining equipment was demobilized and it states: "The original scope of work to mitigate the threats posed to the public health and the environment was completed." The United States' response to this possible argument is set forth in Section XII.A. EPA believes the September 28, 1993 is the conservative, proper and defensible statute of limitations date.

B. (b) (4) Involvement

(b) (4) was an employee of Guardian Environmental Services, Inc. Guardian served as the primary cleanup contractor under the Local Emergency Response Cleanup Services (Mini-ERCS) contract (Attachment 1, Section V.A.4) at the E-Z Chemical Site removal action. The Booz Allen & Hamilton report on (b) (4) involvement in Superfund sites notes that his name appears in about 50 documents in the Site file (Attachment 10). The documents reveal he was listed as an organic chemist who visited the Site about 15 times between April and May 17, 1989; for a total of 100 - 150 hours. None of the documents found appear to have been drafted by (b) (4). The documents consist of: "Sign In/Out" (13 pages); "Site Entry/Exit Log" (4 pages); "Response Fund Cost Report" (18 pages); "Hot Zone Entry/Exit Log" (15 pages) (Attachment 11). Documents of significance found in the Site File not identified by Booz Allen, include his signing some of the sampling chain of custody forms (Attachment 12). EPA proposes sending notice to all recommended defendants of (b) (4) involvement at the Site. Office of Regional Counsel needs to investigate further, through interviews of the OSCs, Technical Assistance Team personnel and Guardian personnel, what (b) (4) role as an organic chemist entailed: did he make or influence decisions on what and where to sample, how to handle the chemicals, how to conduct the cleanup, etc. (See Section XIII.A.).

C. Penalties Under Section 106(b) of CERCLA

In this Litigation Report, EPA Region III is

recommending that Mr. Leonard Goldfine, the party who failed to comply with the Order (Attachment 6), be named as a defendant in an action initiated pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b). As more fully explained in Section VI.C, this recommendation is based on the fact that (1) he failed to comply with the terms of the Order; and (2) that "sufficient cause" does not exist for his noncompliance.

Pursuant to Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), the United States may obtain injunctive relief and/or a fine of up to $25,000 per day of noncompliance against a person who, without sufficient cause, willfully violated or fails or refuses to comply with an administrative order issued pursuant to Section 106. The language of the statute requires only that an order be issued and that a person receiving that order fail to comply without sufficient cause.

Section 106(b)(1) of CERCLA provides that fines may be levied against violators in an action brought in the appropriate United States district court to enforce an administrative order. It could be argued that this provision means that the United States must seek injunctive relief in order to seek penalties. The issue of whether it is necessary to seek injunctive relief when seeking penalties under Section 106(b) of CERCLA was raised in the Blosenski Superfund Site referral (March 13, 1992). A complaint was filed in the action (United States vs. Joseph M. Blosenski, Jr. et. al., Civ. Ac. No. 93-CV-1976) on April 15, 1993 and the position taken by the United States in such action was to seek penalties only. EPA recommends that the same approach be followed here. EPA believes that the correct interpretation of Section 106(b) is that an action for penalties is an action for enforcement of the order and that the language of the statute does not specifically require that an action for injunctive relief be sought. The United States had also previously taken this position in United States v. LeCarreaux et. al., Civ. No. 90-1672, slip. op. (D.N.J. July 30, 1991) (Attachment 13). Indeed, the result in this case would be nonsensical because there is no further work to be done at the Site. If the United States could seek penalties only in an action seeking injunctive relief than it would be foreclosed from seeking penalties in a case such as this one where EPA has completed the work.

Penalties under CERCLA Section 106(b) accrue "for each day in which failure to comply continues." 42 U.S.C. § 9606(b). Thus, penalties started to accrue against Mr. Goldfine as of the day that he was required to implement the Order and failed to do so (Attachment 6, Section VIII, paragraph 8.4). Designation of a Project Coordinator was required within 5 days of the effective date of the Order (January 12, 1990). Thus, January 17, 1990 is the first day Mr. Goldfine was in noncompliance. The penalty should be tolled as of September 28, 1990, the date on which EPA

completed the removal action (Attachment 5, (POLREP 266)). Thus, Mr. Goldfine can be pursued for CERCLA Section 106(b) penalties in an amount of up to $5,825,000 (233 days of noncompliance times $25,000).

D. Punitive Damages under Section 107(c)(3) of CERCLA

In this Litigation Report, EPA Region III is recommending that Mr. Goldfine be named as a defendant in an action initiated pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). As more fully explained in Section VI.D, this recommendation is based on the fact that (1) Mr. Goldfine failed to provide removal action upon order of the President pursuant to CERCLA Section 106 (Attachment 6) and (2) that "sufficient cause" does not exist for his failure to comply.

Pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), the United States may seek punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred as a result of the failure of liable parties to properly provide response action pursuant to a CERCLA Section 106 Order. Although both Section 106(b) and Section 107(c)(3) of CERCLA serve a deterrent function, they are of a distinct nature (see LeCarreaux January 29, 1992 slip op. (D.N.J.)) (Attachment 14). Section 106(b) penalties are specifically designed to deter a party from ignoring such orders in the future and generally to educate the regulated community about the need to comply with Section 106(a) Orders in the future (see LeCarreaux January 29, 1992 slip op., pg 26). Section 107(c)(3) serves to specifically deter the parties' recalcitrance which caused the EPA to incur response costs. "Treble damages will provide an effective deterrent to improper disposal and will insure that those responsible for chemical spills will pay for clean up of the site." (LeCarreaux, January 29, 1992, slip op., pg 27, citing Final Report of the National Association of Attorneys General to the United States Congress on the Superfund Legislation. 126 Cong. Rec. H. 9442 (1980)). In this case, those costs represent the incremental amount that the United States had to expend in order to perform that portion of the removal action Mr. Goldfine was ordered to perform.

Section 107(c)(3) penalties started to accrue as of the first date that the United States started incurring costs to continue to perform the work Mr. Goldfine failed to perform after issuance of the Order.

Because Mr. Goldfine was not ordered to take over all portions of the removal action, it is not appropriate for EPA to recommend seeking damages for all costs EPA expended after Mr. Goldfine failed to comply (January 17, 1990). EPA recommends that treble damages be sought for the costs expended to perform the work Mr. Goldfine was ordered to perform (see Section VIII of

Attachment 6) and related enforcement costs. EPA is in the process of attempting to calculate this amount and will provide it to DOJ, however, at the time of issuance of the Order EPA estimated the work ordered to cost approximately $200,000-$250,000. The punitive damages in this case will punish the recalcitrant party and discourage other PRPs from failing to comply with orders issued by EPA.

There is an issue as to whether it is necessary that there be no temporal overlap between the time periods under the two penalty provisions (Section 106(b) and Section 107(c)(3)). In LeCarreaux, there was no overlap in the time period, however, the Court noted that: "There is nothing in CERCLA itself that suggests that these two provisions should not be applied concurrently." (LeCarreaux, January 29, 1992, slip op., pg 26). In this action, the United States will have to argue that although the temporal difference helps highlight the distinct nature of the two penalty provisions, it is not a requirement of the statute. Indeed, the different thrusts of the two provisions are distinct even if there is an overlap in the time period over which penalties and damages are calculated.[3]

E. Generator Liability under Aceto

In this Litigation Report, EPA is recommending that liability under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3) be pursued under the theory set forth by the Court in U.S. v. Aceto Agr. Chemical Corp. 872 F.2d. 1373 (8th. Cir. 1989) for one of the generator defendants (See Section VII.C).

IV. SITE DESCRIPTION

A. Site Location and History

The E-Z Chemical Site is located at 48-60 (Canal and) Laurel Street in Philadelphia, Philadelphia County, Pennsylvania (Attachment 1, Appendix A). The property comprising the Site is approximately 1.5 acres in size and is located in an urban area. To the southeast and adjacent to the Site is a meat packing/processing plant and to the south is an apartment complex. The elevated train line (public transportation) and Interstate Highway 95 are located two blocks from the Site and a

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[3] In EPA's draft guidance on "Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Treble Damages Claims for Ciolations of Administrative Orders" (November 18, 1991) (Attachment 26), EPA contemplates that the time periods may run concurrently (pg 33). See also "Interim Guidance on Enforcement of CERCLA Section 106(a) Administrative Orders through Section 107(c)(3) Treble Damages and Section 106(b)(1) Penalty Actions." (draft) (Attachment 15).

small bus/limousine service is adjacent to the Site on the west (Attachment 1, Appendix B, Special Bulletin). The Site is situated approximately 1/4 mile inland from the Delaware River and approximately 1/2 mile to the south is Elfreth's Alley, a national historical landmark (Attachment 3).

Laurel Street Corporation and 950 Canal Street Corporation are title holders for the two parcels of land (designated as "B" and "C") respectively which comprise the Site (Attachments 7 and 8). Leonard Goldfine was the sole stockholder, director and officer of both companies between 1977 and 1987. Packaging Terminals, Inc. was a tenant between May 1985 and October 1986 and E-Z Chemical Company was a tenant from October 1986 until at least March 1987 on the "B" and "C" parcels (Attachment 4, Sec. III, No. 12). Both operated a business involving the selling, buying, blending, packaging and storing of chemicals of many kinds. City of Philadelphia Department of Licenses and Inspections records reveal numerous occurrences of spills and/or releases of chemicals at the Site during the time both companies leased the property (Attachments 4 (Section III, Nos. 18-30) and 9). Edmund Zakrocki, Jr. is the President of E-Z Chemical Company (Attachment 4, Sec. III. No. 12). In March 1987, E-Z Chemical Company and Mr. Zakrocki purchased all of the outstanding shares of Laurel Street Corporation and 950 Canal Street Corporation (Attachment 4, Sec. III, No. 12).

B. Facility Processes

The E-Z Chemical Company, from October 1986 until April 1989 (and Packaging Terminals, Inc. between May 1985 and October 1986) operated as a drum and chemical re-packaging plant, temporary chemical storage facility and a production plant for water treatment and purification chemicals (Attachment 4, Sec. III, No. 12). (E-Z Chemical appears to have been formerly located at 3230 North 3rd Street, Philadelphia, PA) (Attachment 4, Sec. III. Nos. 18-30). The company run by Edmund L. Zakrocki Jr. and his son Edmund L. Zakrocki, III operated from the single building on the property. The OSC described the premises as follows:

> This building (facing Laurel Street) contained an office and several file rooms on the ground floor. Behind the office was a large L-shaped storage room containing mostly large boxes and creates (sic) of both hazardous and non-hazardous materials. The other side of this room led to the storage yard. The upstairs of the building contained several adjoining rooms lined with shelves of laboratory-sized containers. Three garage bays attached to the building extended into the storage yards that were filled with drums, crates, trash, and tools. Adjacent to the garage bays was two small storage rooms used mostly to store tools and equipment. A loading dock was attached to this end of the building. Three adjoining rooms extended from the rear of

the loading dock toward Canal Street.

A large storage tank (estimated capacity 4 million gallons) was used to store drums and other containers of hazardous materials. A truck entrance was cut into the tank's side to allow materials to be moved into and out of the tank. The inside floor of the tank gave way to a concave center approximately eight inches lower than ground level where approximately 300 drums were stored. As a result, water from the site collected in the center of the tank. An additional estimated 300 drums were stored around the inside perimeter of the tank, for a total of over 600 drums (Attachment 1, Section III).

The location of E-Z Chemical Company directly affected Site cleanup operations. Canal Street is actually an alley that zigzags between the rear of the E-Z facility and the rear of several businesses facing Delaware Avenue. Many of these businesses used Canal Street to receive shipments directly into their warehouses. Canal Street is also a common area for trash dumping (Attachment 1, Section III).

C. National Priorities List Status

A Preliminary Assessment was performed at the Site (Attachment 16). EPA's contractor (NUS Corporation) recommended that no further action be pursued. A rough Hazard Ranking System score of 21.19 was calculated for the Site. A recent consultation with Michael Giuranna of the Pre-Remedial Section at EPA revealed that no further consideration of the Site for the NPL is planned. Mr. Giuranna can be reached at (215) 597-3165.

D. General Description of Problems Presented at the Site

The overcrowded condition of the Site was the primary problem faced by EPA in performing the removal action. During the first few weeks of the removal action, personnel in protective gear could not safely gain access to all areas of the Site. Drums and other containers were stacked on their sides up to six levels high against the perimeter fences. Throughout the Site, drums in some areas were stacked vertically three levels high. Because no space was available for staging, incompatible materials could not be segregated quickly into likely compatible groups. Almost four months of operations were required until all drums could be stabilized to ground level. (Attachment 1, Section VII). Initially, it was necessary to inventory containers in their original position.

The "Current Waste Management Practices" found at the Site were described as follows in the first Fund Authorization Request (Attachment 1, Appendix B, Special Bulletin A, pg 3):

"At present, numerous drums and containers of a wide variety of chemicals are incompatibly stored and stacked dangerously high. There is a laboratory in the building on site which contains various potentially shock-sensitive chemicals and numerous unlabeled bottles. The tank now being used for storage of drums and containers has approximately six inches of water on its floor. The two drums on site are currently clogged with sludge. Numerous drums are leaking and some are split open."

E. Closed Criminal Investigation

EPA's Office of Criminal Investigations (OCI) received reports that dumping of hazardous chemicals into the sewers occurred at the Site. OCI conducted an investigation into potential RCRA violations. The investigation included sampling containers/drums (see Attachment 5, (POLREPS 4, 6, 14, 15, 31)) but the investigation was ultimately closed out. Questions related to the investigation can be directed to Bob Boodey at (215) 597-0122. The Cost Recovery Section is presently reviewing OCI's records in order to examine sampling results and interview reports[4].

V. STATUS OF CLEANUP PROCESS

A. Other Federal Agencies

An anonymous letter dated November 13, 1984 (from "concerned citizens") was written to EPA; the United States Department of Labor, Occupational Safety and Health Administration (OSHA) was copied on said letter.[5] In the letter it is alleged that "employees are engaged in packaging toxic materials under unsafe conditions" at Fill-Pak Inc., "now trading as Packaging Terminals in the Canal Street Buildings" (Attachment 17). By letter dated

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[4] Consultation with Senior Criminal Enforcement Counsel Martin Harrell of Office of Regional Counsel Region III revealed that the documents are accessible because the criminal investigation was closed out. Mr. Harrell also indicated that he did not think references to the criminal investigation in the POLREPS needed to be deleted before being turned over because of a Freedom of Information Act request or civil discovery because of the status of the criminal investigation (closed out).

[5] Although EPA has a few OSHA documents in the Administrative Record file (Volume I), EPA was able to obtain a complete set of OSHA's files on the facility. OSHA did request EPA to sign a letter agreeing to contact it if a FOIA request is received by EPA for its documents. EPA contacted OSHA's counsel to ensure that OSHA did not object to EPA's sharing the documents with DOJ (Attachment 17).

December 5, 1984, OSHA communicated to Packaging Terminals that an inspection might be conducted (Attachment 17). By letter dated January 19, 1985, Mr. Francis Seklecki responded to OSHA's letter indicating its efforts to operate safely (Attachment 17). EPA's OCI investigator Mike Burns was contacted by OSHA but Mr. Burns indicated OCI did not feel evidence existed to pursue the matter further (Attachment 17). Pennsylvania Department of Environmental Resources ("PADER") held the same opinion (Attachment 17). By letter dated August 1, 1985, OSHA issued citations to Packaging Terminals, Inc. for violations of the Occupational Safety and Health Act of 1970 (Attachment 17). Citation No. 1 (inspection dated March 7, 1985 through July 10, 1985) cites failure to inform employees of protection and obligations provided in the OSHA Act. (Attachment 17). Between October 15, 1985 and July 15, 1986 OSHA sent four letters to Packaging Terminals, Inc. concerning its failure to take corrective action (Attachment 17).

By letter dated December 8, 1986, OSHA issued citations to E-Z Chemical based on an inspection conducted October 2, 1986. Citation No. 1 was issued for failure to separate oxygen cylinders from fuel gas cylinders appropriately and failure to separate oxygen cylinders from acetylene cylinders, increasing potential hazard for fire or explosion. Citation No. 2 was issued for failure to keep clean and orderly or in a sanitary fashion different areas; one carbon dioxide fire extinguisher was standing unsecured near a storage tank; an education program for employees was not provided (Attachment 17). A complaint (Civ. Ac. No. 89-3378) was filed on May 5, 1989 by OSHA against E-Z Chemical Company in the United States District Court for the Eastern District of PA for failure to pay the civil penalties for the December 8, 1986 citations (Attachment 17). A default judgment was entered against E-Z Chemical in said action in the amount of $13,920.90, plus interests, and costs of the action (Attachment 17).

On April 27, 1987, OSHA issued a violation notice to E-Z Chemical Company based on inspection dates between December 17, 1986 and April 10, 1987. Citation No. 1 was issued for, among other things, failure to have adequate railings in temporary floor openings and because areas surrounding tanks containing flammable or combustible materials were not provided with adequate drainage or dikes. The citation notes that tank #27 contained approximately "1400 gallons of isopropal (sic) alcohol and tank #30 contained approximately 2500 gallons of M.I.B.K." (Attachment 17). In addition, E-Z was cited for failure to have fuel gas cylinder straps in place on a forklift truck and because 3 propane cylinders were stored in an unprotected area outdoors. An Informal Settlement Agreement was entered into on May 7, 1987, between E-Z Chemical Company and OSHA regarding this citation pursuant to which E-Z agreed to correct the violations and pay proposed penalties by June 7, 1987 (Attachment 17). By letter

dated September 8, 1987, OSHA informed E-Z Chemical that unless payment was already in the mail, the penalties assessed for the violations noted in the above citation would be subject to interest, as well as delinquent and administrative changes for overdue penalties (Attachment 17).

By letter dated December 22, 1988 OSHA informed E-Z Chemical that it was providing E-Z with copies of citations for violations of the Occupational Safety and Health Act of 1970, based on an inspection of the facility on July 22, 1988 by OSHA (Attachment 17). The first document indicates that the original inspection date for the following violations was April 7, 1987 through May 8, 1987: (1) failure to develop or implement a written hazard communication program to include labeling and other forms of warning, Material Safety Data Sheets and employee information and training; failure to compile a list of hazardous chemicals known to be present in workplace to inform employees of hazards associated with routine tasks and inform contractors of workplace hazards; and (2) failure to provide employees with information and training on hazardous chemicals in their work area at time of initial assignment or when new hazard is introduced (employee was exposed to wide variety of chemicals including but not limited to monochlorobenzone, ortho nitrochlorobenzene, hydrogen peroxide, cadmium sulfide pigment and inorganic acids such as sulfuric). An additional penalty of $6,000 was assessed on December 22, 1988 for failure to abate these violations after the original citation was issued in 1987. Photographs of the Site were taken by OSHA on April 7, 1987 and July 22, 1988. (Although EPA does not have copies of said photographs in its possession, they can be obtained from OSHA upon request) (Attachment 17).

A Citation No. 1 was also issued on December 22, 1988 for failure to keep clean and orderly or in a sanitary condition place of employment. Other violations are listed, including one for storing materials in danger of sliding and collapse. Citation No. 2 was issued for a penalty amounting to $7,200 for violations which included improperly storing 24 drums of monochlorobenzene in yard without diking protection - increasing risk of fire or explosion and lack of suitable facilities for quick drenching or flushing of eyes and body. Citation No. 3 was issued for, among other things, exits from the building were not arranged and maintained so as to provide free and unobstructed egress (exits from building partially blocked with a variety of trash and debris, including 55 gallon drums and smaller hazardous materials containers) (Attachment 17).

OSHA had written to EPA by letter dated February 3, 1988 requesting that EPA evaluate the facility (Attachment 17). By letter dated March 9, 1988, EPA informed OSHA that it had reviewed its files and that the only information EPA had on the facility was a listing identifying it as a generator of hazardous waste. EPA informed OSHA that it had requested that PADER

conduct an inspection of the facility within the next two weeks. PADER may have contacted the City of Philadelphia and the result may have been a Cease and Desist Order issued by the Department of License and Inspections in August 1988 (Attachment 4, Sec. I., No. 1).

There are handwritten notes in OSHA's files dated October 1991 indicating the files should be closed because the company was out of business (Attachment 17).

B. State/Local Response

The Philadelphia Fire Department contacted EPA on April 4, 1989 and indicated that the Site posed a threat of fire and explosion and requested that EPA conduct an inspection with the City of Philadelphia (Attachment 2). Such inspection was conducted on April 5, 1989 (see Attachments 3 and 5 (POLREP 1)). The City of Philadelphia Managing Director's Office, Fire Marshal's Office, Fire Department, Department of Licenses and Inspections and Solicitor's Office participated in the inspection. After the inspection, the Department of Licenses and Inspections served a Cease, Desist and Evacuate Order on E-Z Chemical Company (Attachment 4, Sec. I, No. 1). The order directed operations to cease and to evacuate the premises immediately due to serious fire code violations. The order enumerated the specific fire code violations and indicated that occupancy by employees, patrons and occupants after April 5, 1989 was illegal. On April 11, 1989, the Department of Licenses and Inspections also issued a "Violation Notice" ordering E-Z Chemical Company (c/o Ed. Zakrocki, Jr. 48-60 Laurel Street) to, among other things: remove all defective containers and spilled material (yard); remove all flammable liquid at base of tank; correct condition causing water to accumulate so that ice cannot form and hamper operation of flammable liquid control valve; store hazardous chemicals in dry places (large tank used to store hazardous chemicals - flooded) and provide separation of acid storage and flammable liquid storage (Attachment 18, Vol. II, No. 29)[6].

The OSC Report (Attachment 1, Section V.A.3) describes the involvement of State and Local agencies:

> Representatives of the Pennsylvania Department of Environmental Resources (PADER) made regular visits to the site and provided helpful suggestions.

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[6] Although the violation Notice notes "Con't" at the bottom, EPA only had and included page 1 in the Administrative Record file.

Local support of EPA efforts was essential for successful operations. EPA used documentation from both the Philadelphia Fire Department and the Bureau of License and Inspections to assess the conditions and possible dangers posed by the site, including establishing the fire and explosion threat.

The Philadelphia Fire Department supplied units on scene for possible emergency fire suppression during the ether handling operations. The PFD was also instrumental in the developing of the site emergency contingency plan.

The Philadelphia Streets Department allowed EPA to temporarily close and control access to Canal Street. These actions aided in keeping the street clear and safe for operations, as the street was a common dumping area.

The City of Philadelphia Department of Licenses and Inspections (L&I) issued violation notices for the property as early as 1981[7] (Attachment 18, Sec. I, No. 2). In 1981, a notice was issued to Frank Seklecki (tenant) at 50 East Laurel Street. He was ordered to certify the automatic sprinkler system as having been tested and to "thoroughly clean outside areas." On July 28, 1983, L&I issued a violation notice to Leonard Goldfine (50 East Laurel Street) and ordered him to test all underground flammable and combustible liquid tanks, related piping and equipment utilized in storing and dispensing motor fuels (Attachment 18, Sec. I, No. 6). On January 11, 1984, L&I issued a violation notice against Leonard Goldfine ("c/o Alert") for 50 E. Laurel Street and ordered him to "remove or inert leaking tank" (Attachment 18, Sec. I, No. 8). On October 27, 1986, L&I re-issued a violation notice to Leonard Goldfine, Jean Goldfine and Laurel Street Corporation for violations at 50-60 Laurel Street. (The violations were originally issued on August 20, 1985 to Leonard Goldstein and Terminal Packaging/Frank Seklecki). They were ordered to "remove all identified drums of chemicals on premises" (Attachment 18, Sec. I, No. 12). (The removal of over 8,000 gallons of materials identified as hazardous flammable waste was performed on December 23 and 24,

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[7] The Administrative Record file includes notices issued by L&I to property at 927-41 North Front Street (see Attachment 18, Sec. I, Nos. 2, 5, 7, 9, 10, 11, 13, 14). One of the notices (No. 9) indicates "rear of 927-41 N. Front Street (AKA 900 Block of Canal)." However, these notices do not apply to the Site property.

1986 (Attachment 19). A violation notice was re-issued to Laurel Street Corporation at 50-60 Laurel Street on December 29, 1986 and it ordered that certified testing of the automatic sprinkler system be conducted and repair of the fire door (Attachment 18, Sec. I, No. 15). The notice had been originally issued on August 23, 1985 to Terminal Packaging/Frank Seklecki and Leonard Goldfine.

EPA has City of Philadelphia Fire Department inspection reports but it is not clear if they address the Site property (Attachment 20).

C. EPA Removal Response

On April 7, 1989, the Acting Regional Administrator approved the expenditure of $250,000 to commence emergency removal actions at the Site (Attachment 1, Appendix B, Special Bulletin) because of the conditions observed at the Site on April 5, 1989. The Site's perimeter was bound by a chain link fence which had fallen down along the southwestern property line. Haphazard storage of approximately 2,000 drums and deteriorated fiber, plastic, and metal containers were observed which contained industrial products or wastes. Drums labels indicated that incompatible materials were present without proper segregation. These incompatible materials included chemicals such as ethyl ether, monochlorobenzene, trichlorobenzene, phenol, sulfuric acid, ethylene dichloride, ortho-dichlorobenzene, methylene chloride, trichloroethane, toluene, benzene and methyl ethyl ketone (MEK) (all hazardous substances under CERCLA). Areas of spillage and leaking containers were observed and documented. Thirty-four storage tanks were identified; eight tanks were empty, the remaining twenty-six contained solvents, corrosives or plasticizers. On the southwestern end of the property, a large bulk liquid storage tank (approximately 70 ft high x 60 ft diameter) served as a warehouse for a large number of damaged drums and containers some of which contained liquids and solid chemicals of an undetermined identity. Access into the tank was through a hole cut into the side of the large tank, large enough for a 5 ton truck to drive through. EPA commenced operations on the same day (Attachments 1, Appendix B, Special Bulletin; 5, (POLREP 2) and 6). Three videotapes were taken by EPA in April 1989 showing Site conditions; they are available for DOJ viewing. They are kept in the Emergency Response Room, as are photographs taken of Site conditions, which are also available for DOJ review by calling Jerry Curtin at (215) 597-8218.

On April 19, 1989, the Acting Regional Administrator approved additional funding for the Site ($1,701,500) (Attachment 1, Appendix B, April 19, 1989 memo). On December 7, 1989, EPA Headquarters approved raising the total project ceiling to $2,993,000 and granted an exemption to the $2 million and 12 month limitations of Section 104(c) of CERCLA, 42 U.S.C.

§ 9604(c) (Attachment 1, Appendix B, Dec. 1, 1989 Transmittal Memo). On April 25, 1990, EPA Headquarters approved increasing the total project ceiling to $3,488,061 and again granted the exemptions noted above (Attachment 1, Appendix B, April 19, 1990 Addendum Memo). EPA's removal action consisted of stabilizing the Site and disposing of "2188 product drums, 6268 empty drums, 789 bulked labpack containers, and 23.25 gallons of undrummed liquid. Owners/manufacturers reclaimed 1299 drums of product, 164 empty drums, 77,286 gallons of undrummed liquid, 39 tons of undrummed solids and 7 totes of dispersant." (see Attachment 1 and Appendix B, April 19, 1990 memo). EPA completed the removal action at the Site on September 28, 1990 (Attachment 5, (POLREP 266)).

During the removal action, EPA arranged for approximately 24 companies/individuals to remove their usable product from the Site (Attachment 1, Appendix B, April 19, 1990 Enf. Conf. Memo, pg. 2 and Section V, tables).

EPA's main contractor presence at the Site consisted of Roy F. Weston, Inc. Technical Assistance Team (TAT), who were responsible for advising the OSC on technical issues and documenting Site activities. TAT provided air monitoring, air sampling, site inventory and identification, and assisted with bulking operations. TAT also communicated on a regular basis with product owners, in coordination with EPA's Enforcement OSC, Christopher Thomas, to arrange for the identification and removal of usable product. Guardian Environmental Services, Inc. served as the primary cleanup contractor under the local Emergency Response Cleanup Services (Mini-ERCS) contract mechanism. Guardian provided the personnel and equipment necessary to complete the project, in addition to providing on-site analysis of samples and making arrangements for transport and disposal of wastes. Two primary sub-contractors were hired for specialized operations: (1) ENSI Inc. - handled stabilization and disposal of ethyl ether and (2) Waste Conversion, division of Stoudt Environmental which segregated 789 laboratory containers for disposal (Attachment 1, Sec. V.4).

On January 12, 1990, EPA issued the Order to Mr. Zakrocki and E-Z Chemical Company for access purposes and to Mr. Goldfine for performance of a portion of the remaining removal action (Attachment 6). Specifically, EPA ordered Mr. Goldfine to hire a contractor and arrange for the removal, transportation and disposal of all bottles, containers, vessels or other receptacles containing hazardous substances, pollutants or contaminants which were located on the second floor of the building on the Site and scattered throughout ("laboratory chemicals"). EPA estimated that about 10,000 such containers of laboratory chemicals remained on Site (Attachment 6, Section VIII, Paragraphs 8.2 and 8.5). Mr. Goldfine did not comply with the Order and EPA completed all aspects of the removal action.

OSC Kevin Koob recorded the "Incident Notification Report" (Attachment 3) and represented EPA in the April 5, 1989 inspection of the Site; he was not involved with the Site thereafter. OSC Gerald Heston accompanied OSC Koob on April 5, 1989, authored the first funding request - Special Bulletin A (Attachment 1, Appendix B), co-authored the April 19, 1989, Additional Funding Request (Attachment 1, Appendix B) and was involved with Site activities April 6, 1989 through April 21, 1989, (Attachment 5, (POLREPS 2-15)). OSC George English co-authored the April 19, 1989 funding request and other than "Special Bulletin A", he authored the remaining funding requests. OSC English was involved with the Site from April 6, 1989 through completion of the action on September 28, 1989. His name appears as sole author on all POLREPS except POLREPS #2-15, co-authored with OSC Heston; and POLREPS 264 and 265 when OSC Dennis Matlock visited the Site to assist in final disposition of 19 drums and one laboratory packed container. OSC English did accompany OSC Matlock on the final Site visit on September 28, 1990 (POLREP #265). OSC Matlock notes concerns over costs incurred under the "ERCS contract" on September 7, 1990 (Attachment 5, (POLREP 265)); the matter is discussed in Section XII.A below.

Two Administrative Record files have been prepared for the Site. Volume I is the record in support of the removal action and Volume II is the record in support of the Order.

On July 18, 1990, EPA was contacted by the Philadelphia Fire Department. They reported a spill in the street coming from behind the E-Z Chemical location (See Attachments 21 and 22). OSC Jack Owners responded to the spill and found the Site appeared to have been vandalized. A drain valve on the dike containing tanks 27, 28, 29 and 30 had been opened causing approximately 16,500 gallons of non-hazardous material to spill out of the diked area. The OSC had the liquid pumped into the storm sewer (with the City of Philadelphia's permission) to prevent any further acts of vandalism. Sand was poured on the liquid on Laurel Street to absorb it.

VI. PRIMA FACIE CASE

A. Section 107(a) of CERCLA

Successful prosecution of a cost recovery action under Section 107 of CERCLA requires proof of the following elements:

-- a release or threat of release of hazardous substances into the environment ...

-- from a facility ...

-- which causes the United States to incur response costs ...

-- for which the United States seeks recovery from a party falling into a liability category described in Section 107 of CERCLA.

ORIGINAL (2nd)

This portion of the Litigation Report provides information useful in establishing each of the above elements:

1. Release/Threatened Release of Hazardous Substances Into the Environment

The term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), in pertinent part as follows:

> The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other enclosed receptacles containing any hazardous substance or pollutant or contaminant).

The term "environment" is defined in Section 101(8) of CERCLA, 42 U.S.C. § 9601(8), in pertinent part as follows:

> The term "environment" means ... (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

The term "hazardous substance" is broadly defined in the statute at Section 101(14), 42 U.S.C. § 9601(14), in pertinent part as follows:

(A) any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act;

(B) any element, compound, mixture, solution or substance designated pursuant to Section 102 of CERCLA;

(C) any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);

(D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act;

(E) any hazardous air pollutant listed under Section 112 of the Clean Air Act, and

(F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to Section 7 of the Toxic Substances Control Act.

Pursuant to Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), EPA has published a list of designated hazardous substances. The list is found in EPA's implementing regulations codified at 40 C.F.R. § 302.4.

The numerous drums and containers of a wide variety of chemicals stored incompatibly and stacked dangerously high at the Site constituted a release/threat of release (Attachment 1, Appendix B, Special Bulletin). As a result of site operations the hazardous substances set forth below, as well as others, presented a threat of fire and explosion due to mixing of incompatible chemicals or arson. Following is a list of the hazardous substances and a summary of the health effects of the hazardous substances which were identified through sampling. No sampling analysis to determine a specific hazardous substance was performed of the drums; (except for J.M.B., see VII.B.5 and 6) however, some of them were sampled for RCRA characteristics; unlisted characteristics of corrosivity, ignitability, reactivity, toxicity, (which are listed in Table 302.4 pursuant to 40 C.F.R. § 302.4(b)). The substances listed below were identified through a review of samples of Site debris (pallets, tanks, dumpsters) that were analyzed, as well as air sampling that was performed (Attachment 65).

1. Acetone

(AKA: 2-Propanone; dimethyl ketone; pyroacetic ether.)

Volatile, highly flammable liquid; characteristic odor; pungent, sweetish taste.

Prolonged or repeated topical use may cause erythema dryness. Inhalation may produce headache, fatigue, excitement, bronchial irritation, and, in large amounts, narcosis.

USE: Solvent for fats, oils, waxes, resins, rubber, plastics, lacquers, varnishes, rubber cements. Used in the manufacture of methyl isobutyl ketone, mesityl oxide, acetic acid (ketene process). Used in paint and varnish removers, purifying paraffin, harding and dehydrating tissues.

2. Chromium (Chromic Acid)

Chromic acid or chromate salts constitute industrial

hazards. Irritant effects on the skin and respiratory passages lead to ulceration. Oral ingestion may lead to severe irritation of the gastrointestinal tract, circulatory shock and renal damage. Chromium (III) compounds show little or no toxicity. This substance and certain chromium compounds have been listed as carcinogens by the EPA.

USE: In manufacture of chrome-steel or chrome-nickel-steel alloys (stainless steel); for greatly increasing resistance and durability of metals; for chromeplating of other metals.

3. Methylene Chloride

(AKA: Dichloromethane; methylene dichloride; methylene bichloride.)

Prepared by chlorination of methane. Colorless liquid; vapor is not flammable and when mixed with air is not explosive.

Human Toxicity: Narcotic in high concentrations

USE: Solvent for cellulose acetate; degreasing and cleaning fluids.

4. Phenol

(AKA: Carbolic acid; phenic acid; phenylic acid; phenyl hydroxide; hydroxybenzene; oxybenzene.)

Obtained from coal tar, or made by fusing sodium benzenesulfonate with sodium chloride, or by heating monochlorobenzene with aqueous sodium chloride under high pressure.

Colorless, acicular crystals or white, cryst mass; characteristic odor. Poisonous and caustic. Prone to redden on exposure to air and light, hastened by presence of alkalinity.

Human Toxicity: Ingestion of even small amounts may cause nausea, vomiting, circulatory collapse, tachypnea, paralysis, convulsions, coma, greenish or smoky-colored urine, necrosis of mouth and gastrointestinal tract, icterus, death from respiratory failure, sometimes from cardiac arrest. Fatal poisoning may also occur by skin absorption following application to large areas. Chronic poisoning with renal and hepatic damage may occur from industrial contact.

USE: As a general disinfectant, either in solution or mixed with slaked lime, etc., for toilets, stables, cesspools, floors, drains, etc; for the manufacture of colorless or light-colored artificial resins, many medical and industrial organic compounds and dyes; as a reagent in chemical analysis.

5. Styrene

(AKA: Ethenylbenzene; styrol; styrolene; cinnamene; cinnamol; phenylethylene; vinylbenzene.)

Manufactured from benzene and ethylene. Colorless to yellowish, very refractive, oily liquid; penetrating odor. On exposure to light and air it slowly undergoes polymerization and oxidation with formation of peroxides, etc.

USE: Manufacture plastics; synthetic; rubber; resins; insulator. May be irritating to eyes, mucous membranes, and, in high concentrations, narcotic.

6. 1,1,1-Trichloroethane

1,1,1 TCE - (AKA: Methylchloroform.)

Liquid. Nonflammable. Insoluble in water. Absorbs some water. Soluble in acetone, benzene, carbon tetrachloride, methanol, ether.

USE: In cold type metal cleaning, also in cleaning plastic molds. Irritating to eyes, mucous membranes, and in high concentrations, narcotic.

7. Toluene

(AKA: Methylbenzene; toluol; phenylmethane; methacide)

Flammable Refractive Liquid

USE: In manufacturing benzoic acid, benzaldenyde, explosives, dyes and other organic compounds. As a solvent for paints, lacquers, gums, resins and as a gasoline additive.

8. Ethylbenzene

Colorless Flammable Liquid

USE: For conversion to Styrene Monomer; as a resin solvent

9. Xylene

(M-Xylene, o-xylene, p-xylene)

(AKA Methylbenzene; Xylol)

Obtained from coal-tar. Commercial xylene is a mixture of the three isomers 0-,m-, and p-xylene, with the m-xylene predominating.

Mobile, flammable liquid.

ORIGINAL (Red)

USE: As a solvent; raw material for production of benzoic acid, phthalic annydride, isophthalic and terephtalic acids. Used in the manufacturing of dyes and other organics.

10. 1,2-Dichloroethane

(AKA: Ethylene Dichloride)

Made from ethylene and chloride; heavy liquid; burns with a smoky flame, vapors are irritating - may cause irritation of respiratory tract and conjunctiva, kidney and liver ımpairment. May be a carcinogen.

USE: Solvent for fats, oils, waxes, gums, resıns & rubber.

+ 1,1-Dichloroethane

(AKA: Ethylidene Chloride)

Oily liquid; narcotic in high concentrations

11. Trichloroethene

(AKA: Trichloroethylene)

Nonflammable, mobile liquid, sensitive to heat; potential carcinogen, potentially harmful to liver.

USE: Solvent for fats, waxes, resins, oils, rubber, paint and solvent extraction. Degreaser.

12. Tetrachloroethene

(AKA: Tetrachloroethylene)

Colorless non-flammable liquid. Narcotic in high concentrations, contact can lead to dermatitis.

USE: Dry cleaning; degreaser; solvent.

13. Acrolein

(AKA: 2.-propenal, acrylic aldehyre, acralaldehyde, acrylacdehyde, aqualin)

Flammable liquid, skin irritant

USE: Used in manufacture of metals, plastics, and perfume. Warning agent in methyl chloride refrigerant. Used in poison gas mixtures and aquatic herbicide.

14. Methyl Ethyl Ketone

ORIGINAL (Red)

(AKA: MEK, 2-Butanone; 2-Oxobotane)

Flammable Liquid

USE: As a solvent in the surface coating industry

15. Dichlorobenzene

+ O-Dichlorobenzene (AKA: 1,2 Dichlorobenzene)

Liquid practically insoluble in water

USE: Solvent for wax, gums, rubbers, resins; insecticide; fumigant; degreasing agent; manufacture of dyes; can cause injury to liver, kidneys.

+ P-Dichlorobenzene (AKA: 1,4 Dichlorobenzene)

Volatile crystals with penetrating odor; non-corrosive; Vapors may irritate skin, throat and eyes.

USE: Insecticide fumigant.

16. 1,1-Dichloroethylene

(AKA: 1,1 Dichloroethene, vinylcidene chloride)

Liquid; practically insoluble in water

USE: Intermediate in production of vinylidene polymer plastics. Irritant to skin, mucous membranes, has caused liver and kidney injury.

17. Trichloromonofluoromethane

(AKA: Freon 11, trichlorofluoromethane, fluorotrichloromethane, Frigen 11, Arcton 11)

USE: A refrigerant; an aerosol propellant; decomposes into harmful materials by flames or high heat.

18. 4-Methyl-2-Pentanone

(AKA: Isopropylacetane; Methyl Isobutyl Ketone; M.I.B.K. Hexane)

Colorless liquid.

USE: Solvent for gums, resins, etc.

19. Carbon Tetrachloride

(AKA: Tetrachloroethane; perchloromethane; necatorina; benzinoform)

Colorless non-flammable heavy liquid; a poison. Can be fatal to humans if inhaled, ingested or absorbed. May be a carcinogen.

USE: Solvent for oil, fats, lacquers, etc. Formerly used as dry cleaning agent and as a fire extinguisher.

20. Naphthalene

(AKA: Decalin, decahydronaphthalene)

Liquid with slight odor.

USE: Solvent; lubricant; fuel for stoves

21. Bis (2-ethylhexyl) Phthalate

A possible carcinogen; used in vacuum pumps

22. 1,2,4 Trichlorobenzene

Liquid, volatile with steam

23. Phenol, methyl-

+ Methylphenol, 4-Methylphenol (AKA: P-cresol)

Obtained from coal tar; crystals; volatile in steam; can be used as a disinfectant.

24. Xylenol

(AKA: Dimethylphenol)

Constituent of cresylic acid. Six different isomers. Used for the preparation of coal tar disinfectants and in the manufacture of artificial resins.

25. 1,1,1,2-Tetrachloroethane

Non-flammable heavy mobile liquid.

USE: Non-flammable solvent for fats, oils, waxes and resins. Intermediate in manufacture of trichloroethylene. Liver poison.

26. Diethyl Phthalate

(AKA: Ethyl ester, ethyl phthalate, Neantine, Palatinol A)

Colorless oily liquid used in manufacture of celloid and as a solvent for cellulose acetate in manufacturing varnishes and dopes. Irritating to mucous membranes.

27. Cyclohexane

(AKA: Hexahydrobenzene, hexamethylene, hexanaphthene)

Flammable liquid, solvent odor, may be a skin irritant.

USE: Solvent for lacquers and resins. Paint & varnish removal.

28. 1,4 Dioxane

(AKA: 1,4 Diethylene Dioxide)

Flammable liquid, vapor harmful, may cause damage to liver or kidney. Suspected to be a carcinogen.

USE: Solvent for resins, oils, waxes and other materials.

29. Cadmium

Highly toxic lustrous metal. Ingestion could cause severe salivation, chocking, vomiting, abdominal pain.

USE: for fuses, solder, electroplating and in batteries.

30. Copper

Ductile malleable metal. Copper sulfate is a skin irritant.

USE: in electrical conductors, ammunition and in the manufacture of bronzes, brass and other alloys.

31. Lead

Soft malleable metal which is acutely toxic to humans, especially small children. May cause brain damage if ingested regularly.

USE: in piping and tanks and in other equipment handling corrosives. Used in pigments for paints, in building construction, in manufacturing of other alloys and in medical applications.

32. Nickel

Hard ferromagnetic metal which may cause dermatitis in individuals. Ingestion may cause nausea, vomiting and diarrhea. May be a carcinogen.

USE: for plating operations and in the manufacture of wires and other metal alloys.

33. Selenium

Metals occurring in many forms. Exposure to it has caused pallor, nervousness, depression, gastrointestinal disturbances and dermatitis.

USE: in photography process, in manufacture of electronic equipment and in the processing of rubber.

34. Silver

One of the most malleable and ductile metals, excellent conductor of electricity. Exposure can lead to discoloration of skin and inhalation may irritate mucous membranes.

USE: for making utensils, vessels and in photography.

35. Sodium

Light soft metal which reacts violently with oxygen. Violently decomposes water. Caustic to human tissues.

USE: in manufacture of cyanide and peroxide.

36. Zinc

Metal that reacts with ammonia, water and acetic acid. Inhalation of fumes may result in nausea and vomiting; zinc fumes are an irritant to mucous membranes.

USE: as an ingredient of alloys and as a protective coating to prevent corrosion.

Each of the substances identified above are listed as hazardous substances in 40 C.F.R. § 302.4. The presence of these materials found on the Site demonstrates that a release of hazardous substances has occurred.

2. From a Facility

"Facility" is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), in pertinent part as follows:

> The term 'facility' means ... (b) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or other side come to be located.

The entire E-Z Chemical Company operation and surrounding property fall within the definition of "facility" since hazardous substances came to be deposited, stored, disposed of, placed, and located there.

3. Which Causes the United States to Incur Response Costs

CERCLA permits the United States to respond to releases or threat of releases of hazardous substances and to sue to recover costs appropriately incurred in the course of such responses.

CERCLA Section 104, 42 U.S.C. § 9604, establishes the legal basis upon which response actions may be conducted. That section states in pertinent part:

Whenever

(A) any hazardous substances is released or there is a substantial threat of such a release into the environment, or

(B) there is a release or substantial threat of release of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the National Contingency Plan which the President deems necessary to protect the public health or welfare of the environment.

CERCLA activities may be either "removal" or "remedial" actions. Activities included under the Government's "removal" authority are set forth at CERCLA § 101(23), 42 U.S.C. § 9601(23), as follows:

> The terms "remove" or "removal" means [sic] the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken [sic] in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of

> hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to public health or welfare or to the environment, which may otherwise result from a release or threat of release. The terms include, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under Section 104(b) of the Act, and any emergency assistance which may be provided under the Disaster Relief Act of 1947.

Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), provides in pertinent part that:

> Whenever the President is authorized to act pursuant to subsection (a) of this section of whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants, or contaminants involved, and the extent of danger to be public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigation as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Act.

In response to the release of hazardous substances at the Site, EPA has incurred response costs in an amount exceeding $3,293,583.83 for response actions undertaken to, among other things, stabilize the Site and thereafter dispose of drums, laboratory containers, tank contents, debris, etc. (Attachment 1). In addition, EPA has expended, and continues to expend,

funds for enforcement activities.

4. For Which the United States Seeks Recovery From a Party Falling into a Liability Category Described in Section 107 of CERCLA

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), sets forth several categories of persons against whom the United States may recover response costs. That section provides in pertinent part as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a ... facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility... owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities... or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the National Contingency Plan.

EPA recommends that this action be filed against the proposed defendants identified in Section VII. Section VII also provides information which may be used as a basis for recovery against these parties.

B. CERCLA 106(b) Enforcement Action (Section 106 Order)

In order to successfully prosecute an enforcement action under Section 106(b), CERCLA requires that the defendant be in violation of an order issued pursuant to Section 106(a). Therefore, a discussion of the requirements relating to the

issuance of an order under CERCLA § 106(a) is incorporated below.

106(a) Proof Requirements

- there may be an imminent and substantial endangerment to the public health or welfare or the environment;
- because of a release or threat of a release;
- of a hazardous substance;
- from a facility.

This portion of the Litigation Report provides information useful in establishing each of the above elements:

1. Imminent and Substantial Endangerment to the Public Health or Welfare or the Environment

The endangerment provisions of RCRA § 7003 and CERCLA § 106 contain nearly identical language. Many courts have considered motions made by the United States which involve both Section 7003 and Section 106. In U.S. v. Reilly Tar & Chemical Corp., 546 F. Supp. 1100 (D. Minn. 1982) the United States brought an action under both CERCLA and RCRA, and the court held that "what constitutes an 'imminent and substantial endangerment' under Section 7003 is generally applicable under CERCLA Section 106 as well." Id. at 1114.

Under both Section 7003 and Section 106, it is not necessary for the United States to prove that an "imminent and substantial endangerment" actually exists, but only that such an endangerment may exist. U.S. v. Conservation Chemical Co., 619 F. Supp. 162, 192 (D. Mo. 1985). As a result, injunctive relief is more readily available under Sections 7003 and 106 than it is under traditional standards. For example, in U.S. v. Price, 688 F.2d 204 (3rd Cir. 1982), the United States appealed the district court's decision denying injunctive relief under Section 7003. Though the court upheld the district court's decision on other grounds, it states that the endangerment provision under Section 7003 has "enhanced the courts' traditional equitable powers by authorizing the issuance of injunctions where there is but a risk of harm, a more lenient standard than the traditional requirement of threatened irreparable harm." Id. at 211 (emphasis added). See also Conservation Chemical, 619 F. Supp. at 193 (applying the Price standard to a motion for injunctive relief under Section 106).

A few courts have, in dicta, referred to Sections 7003 and 106 as strictly emergency provisions. See e.g. Outboard Marine Corp. v. Thomas, 773 F.2d 883, 890 (7th Cir. 1985), vacated and remanded in light of amendment of Sections 104 and 107, 107 S.Ct.

638 (1986); U.S. v. Wade, 546 F. Supp. 785, 794 (E.D.Pa. 1982), appeal dismissed 713 F.2d 49 (3rd Cir. 1983). However, courts have more recently held that the language of the endangerment provisions is not limited to emergency situations. To begin with, an "'endangerment' is not actual harm, but a threatened or potential harm." Conservation Chemical, 619 F. Supp. at 192; B.F. Goodrich Co. v. Murtha, 697 F. Supp. 89, 96 (D.Conn. 1988). In U.S. v. Waste Industries, the Fourth Circuit reversed a district court decision denying the United States relief under Section 7003, holding that its application "is not specifically limited to emergency situations." 734 F.2d 159, 165 (1984).

Furthermore, the legislative history regarding "imminent and substantial endangerment" is enlightening. In Price, the court utilized the 1979 "Eckhardt Report," prepared for the Solid Waste Disposal Act:

> Imminence in this section applies to the nature of the threat rather than the identification of the time when the endangerment arose. This section, therefore, may be used for events which took place at some time in the past but which continue to present a threat to the public health or environment.

Price, 688 F.2d at 213 (quoting from Eckhardt Report, H.R. Committee Print No. 96 - IFC 31, 96th Cong. 1st Sess. at 32 (1979)). In Reilly Tar, the court looked to a House Committee report on the Safe Drinking Water Act: "Imminence must be considered in light of the time it may take to prepare administrative orders or moving papers to commence and complete litigation and to permit issuance, notification, implementation, and enforcement of administrative or court orders to protect the public health ..." 546 F. Supp. at 1109 (citations omitted).

> Congress' emphasis on the protection of health and the environment, and especially its approval of the use of nondefinitive data in risk assessments, means that if an error is to be made in applying the endangerment standard, the error must be made in favor of protecting the public health, welfare, and the environment.

Conservation Chemical, 619 F. Supp. at 194. Therefore, just as "imminent" does not require actual harm, the word "substantial" does not require a qualification of endangerment (e.g. the number of people threatened or exposed). Id. Instead, the standard of substantial endangerment is "if there is a reasonable cause for concern that someone or something may be exposed to a risk of harm by a release or threatened release of a hazardous substance

if remedial action is not taken ..." Id. See also, B.F. Goodrich v. Murtha, 697 F. Supp. at 97. A number of factors may be considered (e.g. quantities of hazardous substances involved, or the nature and degree of hazard, etc.), but in any case one or two factors may predominate and be dispositive of the issue. Conservation Chemical at 194; B.F. Goodrich at 97.

In conclusion, decisional precedent and Congressional intent demonstrate that an endangerment is imminent and substantial whenever the public or the environment may be exposed to a risk of harm by virtue of a release or threatened release of hazardous substances. Furthermore, in Conservation Chemical the court stated that the United States must prove only that there may be an endangerment, not that there is an endangerment. 619 F. Supp. 162, 192.

In construing the term "imminent," courts have held that an endangerment is "imminent" if the factors giving rise to it are present, even though the actual harm may not be realized for years. See B.F. Goodrich v. Murtha, 697 F. Supp. at 96; U.S. v. Conservation Chemical, 619 F. Supp. at 175, 193-94; U.S. v. Reilly Tar & Chemical Corp., 546 F. Supp. 1100, 1109-10.

Congress has incorporated these interpretations of the words "endangerment" and "imminent" in amending Section 7003 of RCRA.

An endangerment means a risk of harm, not necessarily actual harm, and proof that the past or present handling, storage, treatment, transportation or disposal of any solid or hazardous waste may present an imminent and substantial endangerment is grounds for an action seeking equitable injunctive relief. Price I supra, and U.S. v. Vertac Chemical Corp. ("Vertac I"), 489 F. Supp. 870, 885 (E.D. Ark. 1980). "An endangerment is 'imminent' and actionable when it is shown that it presents a threat to human health or the environment, even if it may not eventuate or be fully manifested for a period of many years as may be the case with drinking water contamination, cancer, and many other effects. Price I supra, and Reilly Tar I, 546 F. Supp. 1100." S. Rep. No. 284, 98th Cong., 1st Sess., at 59 (Oct. 28, 1984).

An endangerment is "substantial" if there is reasonable cause for concern that someone or something may be exposed to a risk of harm by a release or threatened release of a hazardous substance. A number of factors (e.g., the quantities of hazardous substances involved, the nature and degree of their hazards, or the potential for human or environmental exposure) may be considered in determining whether there is reasonable cause for concern, but in any given case, one or two factors may be so predominant as to be determinative of the issue. B.F. Goodrich v. Murtha, 697 F. Supp. at 96 n.8; Conservation Chemical II, 619 F. Supp. 175, 195-96.

The endangerment may be to the public health or public welfare or the environment.

The United States does not have to show that people may be endangered; use of the disjunctive "or" in Section 106 of CERCLA means that a possible endangerment to public welfare alone, or the environment alone, will warrant relief. The term "public welfare" is very broad; it encompasses "health and safety, recreational, aesthetic, environmental and economic interests." Conservation Chemical II, 619 F. Supp. 175, 192.

The term "environment" is defined in the statute as:

[See Section VI.A.1 above].

EPA's Regional Administrator determined that the actual and/or threatened release of hazardous substances from the Site, may present an imminent and substantial endangerment to the public health, welfare on the environment (Attachment 6). The findings of fact supporting such conclusions are set forth in Section III of the Order (Attachment 6), which is supported by the Administrative Record (Attachment 18).

2. Because of a Release or Threat of a Release

[See Section VI.A.1 above].

3. of a Hazardous Substance

[See Section VI.A.1 above].

4. from a Facility

[See Section VI.A.2 above].

C. CERCLA Section 106(b) Enforcement Action

Section 106(b) provides for the imposition of fines for violating Section 106(a) orders provided that the noncomplying party lacks "sufficient cause" for violating the order. Under Section 106(b) the following elements must be established:

- any person
- without sufficient cause
- willfully violates, or fails or refuses to comply with
- an order of the President issued under subsection (a) of Section 106 of CERCLA.

1. Any Person

The term "person" is defined at Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). The term "person" means individual, firm, corporation, association, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

Mr. Goldfine falls within this definition as an individual.

2. Without Sufficient Cause

The statute does not define the term "sufficient cause," however, legislative history and court interpretation construe it, at least in the context of an action for punitive damages under Section 107(c)(3), as an "objectively reasonable, good faith belief that one has a valid defense." U.S. v. Parsons, 723 F.Supp. 757, 763 (N.D.Ga. 1989) (citing cases). Such a defense can be raised at either the Section 106 enforcement action or the Section 107 cost recovery action. Aminoil, Inc. v. U.S. EPA, 599 F. Supp. 69, 73 (C.D. Cal. 1984). However, such a defense appears to be extremely limited. Id. In the Senate debate on CERCLA, Senator Stafford described the defense (in the context of Section 107(c)(3)) in the following terms:

> We intended that the phrase "sufficient cause" would encompass defenses such as the defense that the person who was the subject of the President's order was not the party responsible under the Act for the release of the hazardous substance ... There could also be "sufficient cause" for not complying with the order if the party subject to the order did not at the time have the financial or technical resources to comply or no technological means for complying was available.
>
> We also intend that the President's orders, and the expenditures for which a person might be liable for punitive damages, must have been valid. In particular, they must not be inconsistent with the national contingency plan... If the orders or expenditures were not proper, then certainly no punitive damages should be assessed or they should be proportionate to the demands of equity.

Reilly Tar & Chemical Corp. v. U.S., 606 F. Supp. 412, 420 (D. Minn. 1985) (citing remarks of Senator Stafford in 1 Legislative History, 770-71) (emphasis added).

"Sufficient cause" does not appear to apply to situations in which alleged responsible parties in good faith assert a reasonable defense that is ultimately rejected by the court. Aminoil at 73.

Therefore, the legislative history of pre-SARA CERCLA, and the limited case law, provide that "sufficient cause" exists where: (1) the person subject to the order was not the party responsible under the Act for the release of the hazardous substance; (2) the party did not at the time have the financial or technical resources to comply; (3) no technical means for complying was available; or (4) the order is inconsistent with the NCP.

In the 1986 amendments to CERCLA, Congress expressly extended the defense of "sufficient cause" to Section 106(b). In the legislative history, it is stated that "courts should carefully scrutinize assertions of 'sufficient cause' and accept such a defense only where a party can demonstrate by objective evidence the reasonableness and good faith of a challenge to an EPA order." It is further stated that "sufficient cause" will continue to be interpreted to preclude the assessment of penalties or treble damages when a party can establish that it had a reasonable belief that it was (1) not liable under CERCLA or (2) that the required response action was inconsistent with the NCP. "Sufficient cause" should be interpreted to apply where the equities demand that no penalties or treble damages be assessed. H. Rep. No. 253(I) 99th Cong., 2d Sess. 82, reprinted in 1986 U.S. Code Cong. & Admin. News 2835, 2864.

On its face, Section 106 does not indicate who, other than a "person," may be sued or issued an order under that section. However, courts have held that liability under Section 106 extends at least to the same class of persons liable under Section 107. In U.S. v. Outboard Marine Corp., 556 F. Supp. 54 (N.D. Ill. 1982), the court, in denying a motion to dismiss the Government's claim under Section 106(a) of CERCLA, stated, "whatever the source of the substantive law to be applied in a 106(a) action, it is probable that those who would be liable under Section 107 were intended to be liable in an action under Section 106(a) for injunctive relief." Outboard Marine, at 57. Other courts have held that the extent of liability under Section 106(a) is at least as broad as Section 107 liability. See U.S. v. Conservation Chemical Co., 589 F. Supp. 59, 62 (W.D. Mo. 1984); U.S. v. Northeastern Pharmaceutical and Chemical Company, Inc. ("NEPACCO"), 597 F. Supp. 823, 839 (W.D. Mo. 1984).

Section 107(a) of CERCLA sets forth several categories of persons from whom the United States may recover response costs. [See Section VI.A.4]. As discussed more fully in Section VII of this Referral, each of the recommended defendants falls into one or more of the categories of persons liable under Section 107(a)

[redacted]

of CERCLA, 42 U.S.C. § 9607(a).

Missing from the legislative history is any reference to "de minimis" contributors as persons who have a "sufficient cause" defense to an action for penalties under Section 106(a). A de minimis defense has been expressly rejected as a defense to liability under CERCLA Section 107(a). "Liability under Section 107(a) is subject only to three defenses, enumerated in Section 107(b), which the defendant bears the burden of proving by a preponderance of the evidence." U.S. v. Ward, 618 F. Supp. 884 (E.D.N.C. 1985). U.S. v. Tyson, 25 Env't Rep. Cas. 1897 (E.D. Pa. 1986).

The extent to which Mr. Goldfine may have a sufficient cause defense, based on elements other than liability, is discussed in Section 5 directly below.

3. Willfully Violates, or Fails or Refuses to Comply

A party who violates or fails or refuses to comply with an order issued pursuant to Section 106(a) may be subject to penalties of not more than $25,000 a day for each day of violation or noncompliance. Mr. Goldfine failed to comply with the Order (Attachment 6). He stated both by letter dated January 17, 1990 and in a meeting held with EPA on January 19, 1990, that he did not believe he was liable and he lacked the financial and technical resources (see discussion, Section 5 directly below) (Attachments 23 and 24).

4. With an Order by the President Issued under Section 106(a)

The Order was issued pursuant to the authority vested in the President of the United States by CERCLA Section 106(a). Such authority was delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987) and pursuant to CERCLA Delegation 14-14-B Administrative Actions Through Unilateral Orders, the authority to issue administrative orders has been delegated to Regional Administrators (Attachment 25). The Order was signed by the Regional Administrator. Additionally, the one limitation placed on that authority, that "Regional Administrators or their delegatees must consult with the Assistant Administrators for Solid Waste and Emergency Response or his/her designed when exercising this authority," was adhered to (Attachment 25). Therefore, issuance of the Order was a proper exercise of authority.

This Litigation Report describes the facts and includes the documentation relevant to support allegations of failure to comply with the Order. EPA recommends the filing of an action against Mr. Goldfine seeking penalties for violation of the Order.

[redacted]

5. Amount of Penalties

Pursuant to Section XVI of the Order, the Order became effective on January 12, 1990; See Section III.C. above (Attachment 6). Mr. Goldfine had until January 17, 1990 to unequivocally and unqualifiedly commit to perform the work required by the Order. See Attachment 6, Section IX, Paragraph 9.1. EPA completed the removal action on September 28, 1990. Thus, Mr. Goldfine's statutory maximum penalty figure is $5,825,000 (between January 17, 1990 and September 28, 1990; 233 days X $25,000).

In the case of U.S. v. LeCarreaux et al., Civ. N. 90-1672, slip. op. (D.N.J. July 30, 1991), EPA, in seeking a civil penalty under Section 106(b), assigned equal importance to four factors:

> (i) degree of environmental harm; (ii) degree of violation; (iii) duration of violation; and (iv) size of violator (Attachment 13 at 35). The Court adopted this approach[8].

i. Degree of Environmental Harm

Any penalty calculation should, with respect to degree of environmental harm, assume that a "worst case" scenario exists at the Site. That is, the conditions at the Site presented a grave threat to human health and the environment. Assuming that this degree of environmental harm could have remained at the Site absent compliance with the Order, the statutory maximum amount should not be reduced by this factor.

ii. Degree of Violation

The degree of Mr. Goldfine's violation is severe, as Mr. Goldfine failed to perform any of the tasks required by the Order, such as selection of a contractor, submission of the required Statement of Work, etc. Thus, the statutory maximum

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[8] Although draft interim guidance exists on "Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Treble Damages Claims for Violations of Administrative Orders" (Draft November 18, 1991), EPA does not appear to have cited such guidance in LeCarreaux, most likely because such guidance is not yet final (Attachment 26). In fact, minutes of the May 1993 conference call of the UAO National Workgroup reflect concern over the practicality of using the scheme for calculating penalties set forth in the draft guidance and queries whether the approach should be dropped in favor of a new one. Thus, in this section, Region III will conduct the analysis using the factors advanced by EPA in recent litigation. Consultation with Office of Enforcement indicates this approach appears to be correct.

cannot be reduced by this factor.

iii. Duration of Violation

As discussed above, Mr. Goldfine was in violation of the order for 233 days; until EPA completed the removal action.

iv. Size of the Violator

A reduction of 50% could be made because of the size of the violator. Although Mr. Goldfine may have had substantial assets and may have fraudulently transferred assets after commencement of EPA's removal action (See Section VII.A.2), EPA's review of his tax returns from 1985 to 1992 indicates that he (not considering Mrs. Goldifine income) could have only paid for the work addressed by the Order if he had sold some of his property, and that the transfer of some of his assets occurred prior to issuance of the Order (Attachment 24A). Therefore, a 50% reduction in the statutory maximum penalty against Mr. Goldfine could be justified, yielding a figure of $2,912,500. Considering litigation risks and the desirability of conserving agency resources an appropriate "bottom line" settlement figure would be 50% of this, or $1,456,250.

v. Sufficient Cause

EPA needs to evaluate whether Mr. Goldfine had "sufficient cause" to fail to comply with the Order. CERCLA and the relevant case law do not make clear who has the burden of establishing whether or not "sufficient cause" for noncompliance exists in a particular instance. An Eighth Circuit case interpreting the pre-SARA Section 106(b) (without the "sufficient cause" language) held that "if neither CERCLA nor applicable EPA regulations or policy statements provides the challenging party with meaningful guidance as to the validity or applicability of the EPA order, Ex Parte Young [209 U.S. 123, 28 S. Ct. 441 (1908)] and its progeny require that the burden rest with the EPA to show that the challenging party lacked an objectively reasonable belief in the validity or applicability of a clean-up order." Solid State Circuits, Inc. v. U.S. EPA, 812 F.2d 383, 392 (8th Cir. 1987). No such policy statements existed at the time of the decision in Solid State Circuits. Id. at n.12. Since the decision in Solid State Circuits, EPA has promulgated a newer version of the NCP. See 55 Fed. Reg. 8813 (March 8, 1990) (codified at 40 CFR Part 300). The NCP now details response actions EPA may take at Superfund sites. 40 CFR Part 300, Subpart E. In addition, there are now many cases that have discussed the liability of various parties under CERCLA. Therefore, unlike the situation discussed in Solid State Circuits, a party now has meaningful guidance (the revised NCP) as to the validity or applicability of an EPA order to perform specific response actions. In the context of Section 107(c)(3) of CERCLA, courts have referred to "sufficient cause"

[redacted]

as a defense to complying with an administrative order. U.S. v. Parsons, 723 F. Supp. 757, 763 (N.D. Ga. 1989) ("sufficient cause" has been defined as an objectively reasonable, good faith belief that one has a valid defense to complying with the administrative order") (emphasis added); Wagner Elec. Corp. v. Thomas, 612 F. Supp. 736, 745 (D.C. Kan. 1985) See also U.S. v. LeCarreaux, Civ. No. 90-1672 (D.N.J. July 30, 1991) (the Court emphasized than an objective belief rather than subjective one is the applicable test). "CERCLA's ... provision of a 'good faith' defense to the assessment of punitive damages sufficiently answers any due process objections grounded in Ex Parte Young."

The effect of placing on the United States the burden of demonstrating that "sufficient cause" for noncompliance does not exist in a particular situation would not, necessarily, be overly burdensome. The United States would simply have to demonstrate that (1) the response action required under the Order is not inconsistent with the NCP; (2) that technological means for complying with the Order are available; (3) that the party subject to the Order is a party responsible under CERCLA for the release of the hazardous substance(s); and (4) that the party subject to the Order had the financial resources to comply. With respect to Element No. 3 and as shown in this Litigation Report, Mr. Goldfine is liable under Section 107(a) and has no valid defenses to liability. By letter dated January 17, 1990, Mr. Goldfine's counsel indicates that he believes EPA erred in concluding his client was an "owner or operator" under CERCLA (Attachment 23). Mr. Goldfine set forth the same argument in the meeting held with EPA on January 19, 1990 (Attachment 24). However, EPA believes sufficient evidence exists to support the finding (see Section VII.A.2). Therefore, he will have a difficult time proving that he had an objectively reasonable, good faith belief he was not liable under CERCLA. In addition, a "good faith" defense which is rejected by the court is not "sufficient cause" for failure to comply with an order. LeCarreaux at 27 (citing Aminoil, Inc. v. U.S. EPA, 599 F. Supp. 69, 73 (C.D. Cal. 1984)). With the possible exception of (4), above, the United States should most often be in a position to establish each of these elements. It may be more difficult for the United States to establish that a defendant has the financial resources to comply.

However, and although Mr. Goldfine claimed he lacked the resources to comply with the Order (Attachments 23 and 24), at least two courts have held that a person's inability to pay for the cleanup is not a "sufficient cause" defense. See U.S. v. Parsons, 723 F. Supp. 757 (N.D. Ga. 1989); U.S. v. LeCarreaux, Civ. No. 90-1672 slip. op. (D.N.J. July 30, 1991). The courts were not sympathetic to the defendants' inability to pay arguments because the defendants had been involved in the business of dealing with hazardous materials. Parsons at 14; LeCarreaux at 21. "Public policy demands that businesses be

[redacted]

required to take into account their financial risks before dealing in hazardous materials." LeCarreaux at 21. In addition, EPA believes that there was significant transfer of assets that took place months before the issuance of the Order but after commencement of the removal by EPA (Attachment 24A).

Although Mr. Goldfine may make an argument that unlike the parties in Parsons and LeCarreaux he was not involved in dealing with hazardous materials, it will be difficult for him to distinguish his situation because he had knowledge, involvement and control of Site conditions (See Section VII.A.2). Mr. Goldfine will not likely be able to prove that he had "sufficient cause" not to comply with the Order. It is appropriate, however, for EPA to look at the "size of the violator" in deciding on the amount of penalties, (although under Parsons and LeCarreaux lack of financial resources is not "sufficient cause" to have failed to obey the Order).

D. CERCLA Section 107(c)(3) Elements

Under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), successful recovery of treble damages requires proof of the following elements:

-- A person who is liable for a release or threat of release of a hazardous substance

-- Fails to properly provide removal action upon order of the President pursuant to Section 106

-- without sufficient cause

To recover treble damages, the United States must prove that the order of the President was validly issued under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). See Section VI.B. above.

Once the Section 106(a) elements are proven, the Court may award treble damages under Section 107(c)(3) of CERCLA as follows:

-- Such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the fund as a result of such failure to take proper action

Indeed, courts have granted the Government's motions for summary judgment on liability for punitive damages under Section 107(c)(3) of CERCLA where the defendant failed to comply with a CERCLA Section 106 Order. See, e.g., U.S. v. Parsons, et. al., 936 F. 2d 526 (11th Cir. 1991); U.S. v. Carolina Transformer Co., 739 F. Supp. 1030 (E.D.N.C. 1989); U.S. v. LeCarreaux, et. al.,

Civ. No. 90-1672 slip. op. (D.N.J. July 30, 1991).

This portion of the Litigation Report provides information to establish each of the above elements:

1. A Person Who is Liable for a Release or Threat of Release of a Hazardous Substance

- "Person"

In Section VI.C.1 above, it is set forth how Mr. Goldfine is a "person" (see Section VI.C.1 above).

- "Liable Parties"

The categories of liable parties are set forth in Section VI.A.4 above. Section VII.A.2 sets forth why Mr. Goldfine is a liable party.

- "Release/Threatened Release of Hazardous Substances"

See Section VI.A.1 above.

2. Fails to Properly Provide Removal Action Upon Order of the President pursuant to Section 106

See Section VI.C.3 and C.4 above.

3. Without Sufficient Cause

See Section VI.C.5 above.

4. Such Person May Be Liable to the United States for Punitive Damages in an Amount at Least Equal to, and Not More than Three Times, the Amount of Any Costs Incurred by the Fund as a Result of Such Failure to Take Proper Action

Because Mr. Goldfine failed to comply with the Order, EPA has expended response costs related to the Site. EPA is presently calculating how much it spent in performing the Work Mr. Goldfine failed to perform pursuant to the Order. However, EPA recommends that the United States seek the full amount of damages allowed under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). The factors considered for reducing a CERCLA Section 106(b) penalty could be considered for Section 107(c)(3) punitive damages, (especially the nature of the party's conduct). Although the statute gives courts the discretion to award between one and three times the amount of the EPA's costs, courts that have awarded punitive damages under Section 107(c)(3) have awarded the full trebled amount. See United States v. Parsons

et. al., 936 F.2d 526, 528 (11th Cir. 1991); United States v. Carolina Transformer Co. Inc. et. al., 739 F. Supp. 1030, 1039 (E.D. N.C. 1989) and LeCarreaux slip op., January 29, 1992 (D.N.J.). These awards are in accord with case law under other environmental statutes that established that the appropriate departure point for a court's analysis in establishing penalties is the maximum penalty exposure. Atlantic States Legal Foundation v. Tyson Foods, Inc. 197 F.2d 1128, 1137 (11th Cir. 1990); United States v. Roll Coater, Inc., 21 Envt'l. L. Rep. 21073 (S.D. Ind., March 22, 1991).

As noted by the Court in LeCarreaux (slip. op. January 29, 1992, pg 29) "The discretionary element contained in the statute (i.e. the discretion to award between one and three times the response costs) suggests that the nature of a defendant's conduct may be relevant in assessing punitive damages. The United States does not have to prove flagrance or egregiousness in order to collect treble damages, but the court should look to the degree of a defendant's noncompliance when assessing damages." Mr. Goldfine's conduct in this case warrants the full trebled amount because he never performed any of the actions required by the Order (Attachment 6).

E. Miscellaneous Issues Regarding Liability and Cost Recovery - Not Inconsistent with the NCP

The courts have held that the defendant bears the burden of proving that the response costs claimed by the United States are inconsistent with the National Contingency Plan ("NCP"). See United States v. Dickerson, 640 F. Supp. 448 (D.Md. 1986); United States v. Ottati & Goss, Inc., 630 F. Supp. 1361, 1394-95, (D.N.H. 1985); United States v. Ward, 618 F. Supp. 844, 899 (E.D.N.C. 1985); New York v. General Electric Company, 592 F. Supp. 231, 303-04 (N.D.N.Y. 1984); United States v. Northeastern Pharmaceutical and Chemical Co., Inc., 810 F.2d 726, 747-48 (8th Cir. 1986). Because the costs incurred by the EPA at the E-Z Chemical Site are not inconsistent with the National Contingency Plan, the proposed defendants should not be able to meet this burden. Sections 300.415 and 300.420 of the NCP, 40 C.F.R. §§ 300.415 and 300.420, describe the type of response removal and pre-remedial actions which may be appropriate in the event of a release or threatened release of hazardous substances. The response actions taken at the E-Z Chemical Site to date, for which the United States seeks to recover its costs (e.g., removal, and pre-remedial etc.) are described in the NCP. The other costs for which the United States seeks recovery are for oversight and enforcement associated with the foregoing response activities. These costs are not inconsistent with the NCP.

VII. RECOMMENDED DEFENDANTS

A. Owner/Operators

1. E-Z Chemical Company

Contact: Edmund L. Zakrocki, Jr., President
600 Tulip Street
Philadelphia, PA 19135

Attorney: Michael J. Stack, Jr., Esquire
Stack & Stack
1600 Locust Street
Philadelphia, PA 19103

Agent for Service: 4401 Convent Lane
Philadelphia, PA 19114

(This address was obtained from the PA Corporation Bureau, however, it is Mr. Zakrocki's old home address (he has since sold the property.))

Incorporation:

Commonwealth of Pennsylvania, April 2, 1982. In good standing (Attachment 27). The Articles of Incorporation (Attachment 28) reveal that Edmund L. Zakrocki, Jr. was the only incorporator.

Financial Viability:

In April 1989, EPA determined in the Access Order that E-Z Chemical Company could not finance the response actions at the Site (Attachment 6, Sec. III, Paragraph 3.21). A Dun & Bradstreet report of May 18, 1993 indicates that the business is no longer active at the Laurel and Canal Streets location; the phone is disconnected (Attachment 29). By letter dated November 22, 1989, EPA asked Mr. Zakrocki to provide financial information on E-Z Chemical and himself (Attachment 4, Section III, No. 5). No response was received. A CERCLA § 104(e) was sent to E-Z Chemical in June 1993 requesting, among other things, financial information; delivery was refused (Attachment 30). EPA served the letter in person on July 9, 1993. E-Z Chemical may still be operating (Attachment 152).

Summary of Liability:

Although E-Z appears to have permanently ceased operations at the Site, E-Z began operations at the Site in 1985 and was operating at the Site at the time of commencement of EPA's emergency removal action. As such E-Z Chemical Company is a responsible party pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

On January 12, 1990, EPA issued the Order (Attachment 6) to E-Z Chemical Company (and Edmund Zakrocki, Jr.) only for purposes of access. EPA determined in April 1989 that E-Z Chemical (and Mr. Zakrocki) were owner/operators but could not finance the action. The Order notes (Section III, paragraph 3.21) that in April 1989 (when EPA initiated the action) "E-Z Chemical's property was subject to a judgment sale by the Sheriff of Philadelphia County in regard to execution on a $5,000 judgment."

E-Z Chemical Company appears to have operated in the mid 1980's at several locations other than 48-60 Laurel Street (Attachment-Fire Code violations), such as 900 block of North Front Street, 3230 N. 3rd Street, 3209 N. 3rd St., 3032 N. 3rd St. and 3rd and Allegheny St. EPA's removal action dealt solely with the property on Parcels "B" and "C" on Laurel Street (Attachments 7 and 8).

On May 17, 1985, the Laurel Street Corporation leased Parcel "B" to Packaging Terminals, Inc. (Attachment 4, Sec. III, No. 12). (Although Francis X. Seklecki was President of Packaging Terminals, an unsigned settlement agreement of December 1985 lists Edmund Zakrocki as President (Attachment 31)). The Packaging Terminals Dun & Bradstreet report lists that in July 1987 Ed Zanocki (sic) was Vice-President (Attachment 32). A Surety Agreement was signed accompanying the lease pursuant to which E-Z Chemical and Edmund Zakrocki are guarantors of the lease (Attachment 4, Sec. III.12.f). Simultaneously, on May 17, 1985, E-Z Chemical and Edmund Zakrocki entered into a 3 party agreement with Packaging Terminals and Leonard Goldfine in which E-Z Chemical would own 1/2 interest in Packaging Terminals' business and would conduct Packaging Terminals' business (Attachment 4, Sec. III.12.g).

On October 1, 1986, E-Z Chemical Company started leasing Parcels "B" and "C" from the Laurel Street Corporation and the 950 Canal Street Corporation (Attachment 4, Sec. III.12.h). On March 19, 1987, all outstanding shares of Laurel Street Corporation and 950 Canal Street Corporation were purchased by E-Z Chemical Company and Edmund Zakrocki. The agreement notes that the only assets of the companies is the real estate and some personal property which is being transferred. Payment of the purchase price for the shares is secured by two mortgages (Leonard Goldfine is the mortgagee) (Attachments 4, Section III, 12.j., k., l., and m., 7, 8, and III.12; and 33).

A review of the E-Z Chemical Company invoices show that between 1986-1989, E-Z had agreements with approximately 100-150 companies for either storage, blending, packaging, selling or buying of chemicals or some combination of the above. Through E-Z's business, thousands of drums (and several tanks) came to be located on the Site.

The City of Philadelphia Department of Licenses and Inspections (L&I) issued violation notices on August 20 and 23, 1985 to Terminal Packaging c/o Frank Seklecki; at that time E-Z Chemical (and E. Zakrocki) was running the business of Packaging Terminal (Attachment 9). The notices require, among other things, removal of all identified drums of chemicals on premises (Attachment 9), removal of all chemical spillage at the loading dock and in the yard (Attachment 9). The notices were re-issued on October 27, 1986 to Laurel Street Corp. (Attachment 9); E-Z Chemical was the lessee of the property at the time (Attachment 4, Sec. III.12.h. and i.).

All of the OSHA inspections described in Section V.A (Attachment 17) apply to the time period in which E-Z Chemical was a lessee of the property or after the March 1987 transactions described above. There was removal of materials from the Site in December 1986, which was overseen by the N.J. Department of Environmental Protection (Attachment 19).

EPA Correspondence with E-Z Chemical Company

EPA provided E-Z Chemical Company/Edmund Zakrocki, Jr. with oral notice of potential liability on April 6, 1989 (Attachment 5, (POLREP 1)) and with written notification of liability by letter dated May 16, 1989 (Attachment 4, Sec. III.10). A CERCLA § 104(e) request for information was sent to Mr. Zakrocki/E-Z Chemical by letter dated April 12, 1989 (Attachment 4, Sec. III.9), and a follow-up request (for financial information) was sent on November 22, 1989 (Attachment 4, Sec. III.15). Answers to these letters were never received by EPA. (EPA is currently evaluating a CERCLA § 104(e) enforcement action). By letter dated June 10, 1993, EPA sent E-Z Chemical/Edmund Zakrocki an additional CERCLA § 104(e) request for information letter; delivery was refused (Attachment 30). On July 9, 1993, EPA delivered the letter to his residence.

Theory of Liability:

E-Z Chemical Company is liable as an operator of the facility under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). It has been an operator since it entered into the Agreement to run Packaging Terminals, Inc.'s business (May 17, 1985). It continued being an operator when it started operating it's own business at the Site as lessee (October 1, 1986). In addition, it continued being an operator after it (and E.Zakrocki) acquired the 950 Canal Street Corporation and the Laurel Street Corporation. Lessees have been held liable for the period during which they leased, South Carolina Recycling & Disposal Inc., 653 F. Supp. 984 (D.S.C. 1984). E-Z Chemical is also liable as, in effect, a parent company of 950 Canal Street Corporation and Laurel Street Corporation who hold title to the property, see Colorado v. Idarado Mining Co. 707 F. Supp. 1227

(D. Colo. 1989) (parent corporation liable due to its "intimate involvement" in its subsidiary's business activities); rev'd on other grounds, 916 F.2d 1486 (10th Cir. 1990), cert-denied, 111 S. Ct. 1584 (1991). In Vermont v. Staco, Inc., 684 F. Supp. 822 (D. Vt. 1988), rescinded in part and vacated in part, 31 Env't. Rep. Cas. (BNA) 1894 (1989), the Court found liable a company who owned all the stock of the company that held title to the property.

2. 950 Canal Street Corporation

Contact:

Edmund L. Zakrocki, Jr. - Chief Executive, President
(same telephone number as Laurel Street Corporation)
(215) 923-5900

Attorney:

Unknown

Agent for Service:

(Registered Address)[9]
50 Laurel Street
Philadelphia, PA 19123
(same address as Laurel Street Corporation)

Incorporation:

Commonwealth of Pennsylvania, October 27, 1977. In good standing (Attachment 34). The Articles of Incorporation (Attachment 35), indicate that the corporation was formed for the purpose of among other things, "buying, selling, owning, leasing, mortgaging, encumbering and otherwise dealing in and disposing of real estate and interests therein for and on its own account as principal and as the straw party or nomine (sic) of the owner of the real estate." Matthew S. Biron (Esq.) is listed as the incorporator.

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[9] The Pennsylvania Code (42 Pa. C.S.A. § 424) states: "Service of original process upon a corporation or similar entity shall be made by handing a copy to ... 1) an executive officer, partner or trustee of the corporation ... 2) the manager, clerk or other person for the time being in charge of any regular place of business or activity ... 3) an agent authorized by the corporation ..." As can be seen, a registered agent is not required for effective service of process. The Pennsylvania Bureau of Corporations verbally confirmed that only a registered address is kept in the listings.

Financial Viability:

100% of capital stock is owned by Mr. Zakrocki, Jr. (Attachment 36). On May 28, 1993, Dun & Bradstreet conducted a search of its Public Record Database (which contains millions of business-related bankruptcies, suits, liens, judgments and UCC filings) revealed no filing related to the company. In addition, and on said date, Dun & Bradstreet searched its Payment Database (which contains millions of accounts receivable experiences provided to Dun & Bradstreet by vendors nationwide) and it contained no current payment information relating to the company. The Administrative Record Vol. II contains a Statement of Assets and Equity prepared by an accounting firm which shows that in March 1987, assets (land and building) amounted to $50,000 (Attachment 18, Sec. V., Doc. 13). EPA is in the process of preparing a financial CERCLA § 104(e) to be sent to the 950 Canal Street Corporation but it appears that the company is very small and likely has limited assets.

Summary of Liability:

950 Canal Street Corporation has been the owner of Parcel "C" of the property comprising the Site since October 27, 1977 and leased the parcel to Packaging Terminals, Inc., E-Z Chemical Company and E. Zakrocki (Attachments 4, Sec. III.12.h. and i. and 8). As such, 950 Canal Street Corporation is a responsible party pursuant to Section 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (a)(2).

The Dun & Bradstreet report (Attachment 36) indicated that the company is an owner of commercial property and is engaged in the business of leasing such properties. The report also indicates that it does business out of 50 Laurel Street, Philadelphia, PA 19123.

On October 1, 1986, 950 Canal Street Corporation (at that time 100% stock owned by L. Goldfine) (Attachment 4, Sec. III.13.h. and i.) started leasing the property to E-Z Chemical Company. On March 19, 1987, all outstanding shares of 950 Canal Street Corporation were acquired by E-Z Chemical Company and Edmund Zakrocki (Attachment 4, Sec. III.12.j.-m.). However, 950 Canal Street Corporation is still the owner of record of Parcel "C" (Attachment 8).

See Section VII.A.1 above (on E-Z Chemical Company) and Section V.B above re: City of Philadelphia Department of Licenses and Inspection violation notices and OSHA violation notices. 950 Canal Street Corporation was the owner of Parcel "C" during the period in which all the above violations were issued.

Notice of potential liability will be provided to 950 Canal Street Corporation in the proposed letter described in Section

XIII. A. below.

Theory of Liability:

950 Canal Street Corporation (and Laurel Street Corporation) are liable as the present owners of the polluted facility under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). See N.Y. v. Shore Realty, 759 F. 2d. 1032, 1049 (2d. Cir. 1985), "Section 9607(a)(1) unequivocally imposes strict liability on the current owner of a facility from which there is a release or threat of release, without regard to causation." See also, Vermont v. Staco, Inc., 684 F. Supp. 822 (D. Vt. 1988); U.S. v Stringfellow, 661 F. Supp. 1053 (C.D. Cal. 1987); U.S. v Tyson, 12 CWLR 872 (E.D. Pa., August 22, 1986); U.S. v Argent, 21 Envt. Rep. Cas. 1354 (D.N.M. May 5, 1984). They are also liable as the owners landlords/lessors of the facility during period of disposal under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). 950 Canal Street Corporation leased Parcel "C" to E-Z Chemical between at least October 1, 1986 and March 17, 1987. Laurel Street Corporation leased Parcel "B" to Packaging Terminals, Inc. between May 17, 1985 until sometime in 1986 and then leased the parcel to E-Z beginning on March 17, 1987. (It is not known whether 950 Canal Street Corporation and Laurel Street Corporation continued leasing the parcels to E-Z Chemical after March 17, 1987, or whether the corporate fictions were ignored since E. Zakrocki, in effect, owned all three companies). A lessor who "allows property under his control to be used by another in a manner which endangers third parties or which creates a nuisance" may be liable, U.S. v South Carolina Recycling & Disposal, Inc., 653 F. Supp 984, 1003 (D.S.C. 1984). See also N.Y. v. Shore Realty (supra) and U.S. v. Northernaire Plating Co., 670 F. Supp. 742 (W.D. Mich. 1987) and U.S. v. Argent (supra).

3. Laurel Street Corporation

Contact:

Edmund L. Zakrocki, Jr., Chief Executive, President
(215) 923-5900

Note: The PA Corporation Bureau had Leonard Goldfine on file as the Chief Executive Officer at the following address:

c/o E-Z Chemical Co.
Laurel and Canal Streets
Philadelphia, PA 19123

Attorney:

Unknown

Agent for Service:

(registered address)
c/o Leonard Goldfine
50 Laurel Street
Philadelphia, PA 19123

Incorporation:

Commonwealth of Pennsylvania, September 6, 1984. In good standing (Attachment 34). The articles of Incorporation list Leonard Goldfine as the incorporator (Attachment 37).

Financial Viability:

100% of capital stock is owned by officers. Dun & Bradstreet reports that attempts to reach officers (Edmund L. Zakrocki Jr., Pres. and Edmund L. Zakrocki III (son), Sec.-Treasurer) were unsuccessful through May 28, 1993 (Attachment 38). The Administrative Record Vol. II contains a Statement of Assets and Equity prepared by an accounting from which shows that in March 1987, assets (land, building equipment was $96,591.00 (Attachment 18, Sec. V., No. 14)). EPA is in the process of preparing a financial CERCLA § 104(e) to be sent to the Laurel Street Corporation but it appears that the company is very small and likely has limited assets.

Summary of Liability:

Laurel Street Corporation has been the owner of Parcel "B" of the property comprising the Site since September 17, 1984 (Attachment 7). As such, Laurel Street Corporation is a responsible party pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

The Dun & Bradstreet report (Attachment 38) indicates that the company is an operator of commercial real estate. The report indicates that Laurel Street Corporation does business out of 50 Laurel Street, Philadelphia, PA 19123.

On May 17, 1985, the Laurel Street Corporation leased Parcel "B" to Packaging Terminals, Inc. (Attachment 4, Sec. III.12a. and b). On October 1, 1986, Laurel Street Corporation started leasing the property to E-Z Chemical (Attachment 4, Sec. III.12.h. and i.). On March 19, 1987, all outstanding shares of Laurel Street Corporation were acquired by E-Z Chemical Company and Edmund Zakrocki (Attachment 4, Sec. III.12.j.-m.). However, Laurel Street Corporation is still the owner of record of Parcel "B" (Attachment 7).

See Section VII.A.1 above (on E-Z Chemical Company) and Section V.B. above, re: City of Philadelphia Department of

Licenses and Inspections violation notices and OSHA violation notices. Laurel Street Corporation was the owner of Parcel "B" during the period in which all of the above violations were issued; some were issued to Laurel Street Corporation by name.

Notice of potential liability will be provided to Laurel Street Corporation in the proposed letter described in Section XIII.A. below.

Theory of Liability:

See discussion in VII.A.2. "Theory of Liability" of 950 Canal Street Corporation, above.

4. Edmund Zakrocki, Jr.

Contact:

6000 Tulip Street
Philadelphia, PA 19135

Attorney:

See counsel for E-Z Chemical Company

Agent for Service:

N/A

Incorporation:

N/A

Financial Viability:

In April 1989, EPA determined that Edmund Zakrocki, Jr. could not finance the response actions at the Site (Attachment 6, Sec. III, Paragraph 3.21). By letter dated November 22, 1989, EPA asked Mr. Zakrocki to provide financial information on E-Z Chemical and himself (Attachment 4, Sec. III. No. 15). No response was received. A financial CERCLA § 104(e) was sent to Mr. Zakrocki in May 1993; delivery was refused (Attachment 30). EPA delivered the letter in person on July 9, 1993.

Summary of Liability:

Edmund Zakrocki, Jr., personally and as President of E-Z Chemical Company, was involved in the waste disposal practices of E-Z Chemical Company at the Site. As such, Mr. Zakrocki, Jr. is a responsible party pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

On January 12, 1990, EPA issued the Order (Attachment 6) to E-Z Chemical Company and Edmund Zakrocki, Jr. only for purposes of access. EPA determined in April 1989, that Mr. Zakrocki (and E-Z Chemical) were owner/operators but could not finance the action. The Order notes (Attachment 6, Section III, paragraph 3.21) that in April 1989 (when EPA initiated the action), "E-Z Chemical's property was subject to a judgment sale by the Sheriff of Philadelphia County in regard to execution on a $5,000 judgment."

Section VII.A.1., above, Summary of Liability, (E-Z Chemical Company) paragraphs 4, 5, 6, 7, and 8 set forth the basis of liability of Edmund Zakrocki, Jr. It is worth adding however, that an Agreement of December 1985 lists Edmund Zakrocki as President of Packaging Terminals, Inc. (Attachment 31). In addition, pursuant to the May 17, 1985 agreement (Attachment 4, Sec. III.12.g.), Packaging Terminals, Inc. and E-Z Chemical Company agreed to attempt to sell chemicals left in tanks on the property by a prior lessee; any profits realized to be shared one half to L. Goldfine and the other half to Packaging Terminals and E. Zakrocki.

Theory of Liability:

Edmund Zakrocki, Jr. is liable as an operator of the facility under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Mr. Zakrocki entered into the May 17, 1985 agreement (Attachment 4, Sec. III.12.g.) personally, agreeing to run Packaging Terminals' business at the Site. When E-Z began leasing the property (October 1, 1986), he was President and owned 100% of the stock of E-Z. He continued being an operator after he (and E-Z Chemical) acquired the stock of 950 Canal Street Corporation and Laurel Street Corporation. In Vermont v. Staco, Inc., 624 F. Supp. 822 (D. Vt. 1982), the majority stockholder of the company that owned the stock of both the company that operated the facility and another company that held title to the property was found liable. Mr. Zakrocki is also clearly a corporate officer with authority and responsibility to control waste handling, see United States v. Northeastern Pharmaceutical & Chemical Co., (NEPACCO), 579 F. Supp. 823 (W.D. Mo. 1984), aff'd in pertinent part, 810 F.2d 726, 743 (8th Cir. 1986), cert. denied, 484 U.S. 848 (1987), U.S. v. Mexico Feed & Seed Co., 764 F. Supp. 565 (E.D. Mo. 1991); Nurad, Inc. v. Hooper & Sons Co., 22 Envt'l L. Rep. (Envt'l L. Inst.) 20 (D. Md. 1991), aff'd 966 F.2d 837(4th Cir. 1992), cert. denied, 113 S. Ct. 377 (1992), (liability based on control of the activities leading to the release of hazardous substances).

B. Owner/Operators at the Time of Disposal

1. Leonard Goldfine

Contact:

Leonard Goldfine
50 Laurel Street
Philadelphia, PA 19123

Residence:
1424 Melrose Avenue
Melrose Park, PA

Attorney:

Kermit Rader, Esq.
Manko, Gold & Katcher
Suite 500
401 City Avenue
Bala Cynwyd, PA 19004
(215) 660-5700

Agent for Service:

N/A

Incorporation:

N/A

Financial Viability:

Mr. Goldfine held or has held title to various properties but in 1989 he transferred many of his holdings to his wife's name (Beatrice Goldfine). When asked about this in January 1990, he indicated he did it to preclude his wife from having to pay inheritance taxes (Attachment 24 and 24A). Other transfers appear to involve other family members. A list of real estate transactions is included as Attachment 39. Some of the transactions are: (1) 914, 927, 933 and 937 N. Front Street, Philadelphia, and 1412 Callader St. Philadelphia and 1413 Germantown Ave, Philadelphia - Leonard Goldfine assigned the mortgages on the properties to his wife on January 4, 1990; (2) Iron WS, Laurel St. Phila - Leonard Goldfine transferred title to Stanley Goldfine on April 17, 1990 and (3) he may have transferred title to a shopping center valued at $500,000 for a nominal amount to his wife on November 9, 1989, (Attachments 24 and 40).

In EPA's September 7, 1989, notice letter to Mr. Goldfine, EPA requested Mr. Goldfine's state and federal tax returns for the last 5 years (Attachment 4, Sec. III.13). In EPA's follow-up CERCLA § 104(e) to Mr. Goldfine of November 22, 1989, EPA requests financial information on Mr. Goldfine again (Attachment 18, Sec. V; 10). By letter dated December 1, 1989, Mr. Goldfine's counsel refused to provide Mr. Goldfine's tax returns (Attachment 4, Sec. III.17). However, after issuance of the Order, and by letter dated January 17, 1990, Goldfine's counsel provided the most recent tax return (1988) (Attachment 23). At

the meeting held with Mr. Goldfine after issuance of the Order on January 19, 1990, Mr. Goldfine indicated additional tax returns and financial information would be provided. It was provided to EPA thereafter (Attachment 24). An analysis of Mr. Goldifne's tax returns from 1985 to 1992 was conducted by Leo Mullin, an EPA Region III financial analyst. Mr. Goldfine's income for 1992 was approximately $190,868 (Attachment 24A). EPA's recent CERCLA § 104(e) letter to Mr. Goldfine again requested extensive financial information (Attachment 41). A response to the questions in the letter was received (Attachment 33); financial information has not yet been provided, although Mr. Goldfine's counsel indicates it is following.

Summary of Liability:

Leonard Goldfine was an operator of the Site between October 27, 1977 (when 950 Canal Street Corporation acquired title to Parcel "C"; Mr. Goldfine sole shareholder and President) and at least March 19, 1987 (when all outstanding shares of 950 Canal Street Corporation and Laurel Street Corporation were transferred to E. Zakrocki and E-Z Chemical) (Attachment 4, Sec. III.12, and 12.j.-m.). As such, Mr. Goldfine is a responsible party pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), because there is evidence of disposal in a portion of such period (See Section VII.A.1, Summary of Liability, paragraph 6). In EPA's Order of January 12, 1990 (Attachment 6, Sec. IV, Paragraph 4.6), EPA concluded Leonard Goldfine was an owner or operator at the time hazardous substances were disposed there, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). See Section III 'Findings of Fact' in the Order (Attachment 6).

Leonard Goldfine was the sole stockholder, director and officer of Laurel Street Corporation and 950 Canal Street Corporation (owners of the property) during periods of 'disposal' at the Site (Attachment 4, Sec. III., No. 12). Most of Parcel "B" was owned by Leonard Goldfine, Jean B. Goldfine, Lillian C. Biron and Stanley Goldfine between 1972 and 1984 (Attachment 7). (It is of interest to note that L. Goldfine appears to have held himself out as sole 'Landlord' between at least 1975-1982 (Attachment 42)). In 1984, Parcel "B" was transferred to Laurel Street Corporation (Attachment 7). In 1977, Parcel "C" was transferred to 950 Canal Street Corporation (Attachment 8). Both Laurel St. and 950 Canal Corporations were engaged in the business of leasing the property to others (Attachment 4, Sec. III.12.). Leonard Goldfine, as President and sole stockholder of Laurel Street Corporation and 950 Canal Street Corporation, signed the leases with Packaging Terminals, Inc. and E-Z Chemical Company described in Section VII.A.1 above. Leonard Goldfine was aware that some lessees, including E-Z Chemical, engaged in businesses involving the handling of chemicals (Attachment 4, Sec. III.15). The lease with E-Z provided that the premises permitted uses included "selling, buying, blending, packaging,

storing and otherwise legally dealing in chemicals of all kinds." (Attachment 4, Sec. III.12.h and i.). Leonard Goldfine was aware of the conditions on the Site during the period his companies were lessors (see description in VII.A above). Some E-Z invoices indicate that payment of the invoice has been assigned and then indicate either that payment should be remitted to the 950 Canal Street Corporation at 50 Laurel Street or to Leonard Goldfine at 50 Laurel Street (Attachments 152-154). He received at least 4 violation notices personally, from the City of Philadelphia L&I between 1984 and 1986 dealing with a leaking tank, removal of drums and chemical spillage (Attachments 9 and 33). By letter dated March 9, 1987, Mathew S. Biron, Esq. (counsel for Laurel Street Corporation) wrote to the City and enclosed hazardous waste manifests, showing disposal of 4900 gallons of flammable waste on December 23, 1986, and 3300 gallons of flammable waste on December 24, 1986 by Phipps Products Corporation from the Site (Attachment 43). The waste was disposed at Rollins Environmental of Bridgeport, N.J. EPA also obtained a manifest for 275 gallons of hazardous waste liquid disposed of from the Site by Phipps Products on March 30, 1987 from the N.J. Department of Environmental Protection (Attachment 44). (Phipps notified EPA on January 12, 1987 that they were a small quantity generator and listed its location as E-Z Chemical, Laurel and Canal Sts. (Attachment 45)). A Settlement Agreement entered into on March 19, 1985 by Phipps Products Corporation and Packaging Terminals, Inc. and Frank Seklecki, reflects knowledge on the part of the landlord, Laurel Street Corporation (among others) of the conditions of the premises (i.e. waste drums, waste products) (Attachment 46). It is worth noting that the OSHA violation notice issued to E-Z for exposing employees to a wide variety of chemicals was based on an inspection of April 7, 1987; only 19 days after the March 19th transactions pursuant to which Laurel St. Corporation and 950 Canal Street Corporation were transferred to E-Z (Attachment 4, Sec. III.12.j.m.).

In addition, the May 17, 1985 agreement between E-Z Chemical (and E. Zakrocki), Packaging Terminals, Inc. and Leonard Goldfine (Attachment 4, Sec.III.12.j.), was entered into because Packaging had defaulted on certain leases to, among others, Laurel Street Corporation and L. Goldfine. This agreement was executed to ensure payment to Laurel and Goldfine. Under the terms of the agreement, Packaging agreed to supply Goldfine with an inventory of chemicals that had been "abandoned by a prior lessee" at the Site. Pursuant to the agreement, Packaging and E-Z agreed to undertake the sale of the abandoned chemicals. Goldfine is to receive one-half of the gross sales price of the chemicals; the agreement is signed by Goldfine in his individual capacity and as a representative of E-Z Chemical.

It is of interest to note that Goldfine also signed the surety agreement accompanying the lease as President of E. Z. Chemical (Attachment 4, Sec. III.12.f.). In addition, the copy

of the agreement accompanying Mr. Goldfine's CERCLA § 104(e) response dated June 29, 1993, includes an attachment setting forth the building layout (Attachment 33). Said drawing designates an area on both floors of the building as "used by Goldfine."

Leonard Goldfine still holds the mortgages securing payment of the purchase price of Laurel Street Corporation and 950 Canal Street Corporation (amounting to $1,019,200.00) (Attachment 4, Sec.III.12.j-m.). Mr. Goldfine also maintained an office in a trailer directly next to, and in full view of the Site during the period in which Laurel Street Corporation and 950 Canal Street Corporation leased parcels "B" and "C" to Packaging and E-Z Chemical (Attachment 47).

In the Order, EPA ordered L. Goldfine only to dispose of the 'laboratory containers' found on the Site, not drums, tank contents, debris, etc. (Attachment 6). EPA based this decision on Mr. Zakrocki's statement in an interview held on November 6, 1989, that all lab samples and material were on the second floor of the building when E-Z came to the property (Attachment 4, Sec. I, No. 12). However, based on a review of the evidence cited above, showing Mr. Goldfine's knowledge of Site conditions and his financial participation in the sale of chemicals from the premises, EPA believes there is sufficient evidence to name Mr. Goldfine in a CERCLA Section 107 action for all costs spent by EPA at the Site.

EPA Correspondence with Leonard Goldfine:

EPA sent a CERCLA § 104(e) information request letter to Mr. Goldfine dated August 8, 1989; a response was received by letter dated August 18, 1989. EPA sent Mr. Goldfine a notice of potential liability and opportunity to settle by letter dated September 7, 1989; a response was received by letter dated September 15, 1989 (disclaiming liability). By letter dated November 22, 1989, EPA sent a follow-up CERCLA § 104(e) to Mr. Goldfine; a response was received by letter dated December 1, 1989 and December 27, 1989. The Order was forwarded to Mr. Goldfine by letter dated January 12, 1990 and a response was received by letter dated January 17, 1990 (Attachments 4, (Sec. III.11, 12, 13, 14, 17), 31; 6 and 23). EPA sent another CERCLA § 104(e) letter to Mr. Goldfine by letter dated June 10, 1993; a response was received by letter dated June 29, 1993 (Attachments 33 and 41).

Theory of Liability:

Leonard Goldfine is liable as an owner/operator at the time of disposal under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Mr. Goldfine was the sole stockholder and president of 950 Canal Street Corporation and Laurel Street

Corporation between 1984 and March 17, 1987 when there is evidence of disposal at the Site (see Summary of Liability above).

Mr. Goldfine is liable as an owner/operator under CERCLA § 107(a)(2) under two theories: subject to direct individual liability under CERCLA, and subject to indirect liability through piercing the corporate veils of 950 Canal Street Corporation and Laurel Street Corporation.

Direct Liability

Although the corporate entities signed the leases for Parcels "B" and "C", Mr. Goldfine was the President and sole shareholder of the corporations. The theory is liability as an operator based on overall control of the facility at which a release of hazardous substances occurs. In U.S. v. Bliss, U.S. District Lexis 10683 (E.D. Mo., September 27, 1988) the Court found the President of a nursery company with authority to control the disposal of hazardous wastes and prevent the damage caused by disposal personally liable as an owner/operator under CERCLA. See also, NEPACCO (supra), 110 F. 2d 726 (8th Cir. 1986); U.S. v. Mottolo, 695 F. Supp. 615 (D. N.H. 1988) and United States v. Mexico Feed (supra). Although Mr. Goldfine was not the President of the companies producing the waste, he was President of the companies leasing the land to others and was aware and involved in the conditions at the Site. As discussed above, pursuant to the May 17, 1985 agreement he was to personally receive 1/2 of the sales price of chemicals. In addition, several L&I notices were issued to him personally. In N.Y. v. Shore Realty Corp., 759 F. 2d 1032 (2nd Cir. 1975), the Court found the individual who formed a corporation solely for the purpose of purchasing contaminated property for development, (the facility) to be personally liable as an operator. The Court found that an owning stockholder who manages the company owning the Site is liable as an operator. In U.S. v. Carolawn Co., 21 Env't Rep. Cases 2124 (D.S.C. 1984), the Court imposed liability on two stockholders of a corporation that owned, but claimed not to have operated, the disposal site. Although, the U.S. alleged the individuals were corporate officials who participated in hazardous waste disposal activities (and thus subject to individual liability), the Court finds that: "...to the extent that an individual has control or authority over the activities of a facility from which hazardous substances are released or participates in the management of such a facility, he may be held liable for response costs incurred at the facility notwithstanding the corporate character of the business." Carolawn at 2131. In Nurad Inc. v. Hooper & Sons Co. (supra) the court considered as a relevant factor whether the defendant was in a position of responsibility given the defendants' relationship to the entity causing the releases, to have prevented or significantly abated the release of hazardous

substances which gave raise to the claim of operator liability. See also, Kelly v. Arco Indus. Corp., 723 F. Supp. 1214, 1219 (W.D. Mich. 1989). In Vermont v. Staco, Inc., 624 F. Supp 822 (D. Vt. 1982), the Court found liable the majority stockholder of a company that held stock to two other companies; one that ran the business producing the waste and the other which held title to the facility. Although Mr. Goldfine will argue that the companies he controlled merely held title to the property, the facts described above show substantial involvement by Mr. Goldfine in Packaging and E.Z's businesses.

Liability Through Piercing Corporate Veil

The U.S. should advance the argument that the corporate veils of 950 Canal Street Corporation and Laurel Street Corporation should be pierced to reach Mr. Goldfine personally because of the facts set forth above.

Not Liable Under Section 107(a)(1)

Mr. Goldfine became the mortgagor of the property when he sold the two companies to E-Z Chemical and E. Zakrocki. As such, he is potentially liable as a present owner/operator under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). However, the definition of owner/operators under Section 101(2)(A) of CERCLA, 42 U.S.C. § 9601(20)(A) exempts "a person, who without participating in the management of ... a facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility....", EPA does not presently have proof of Mr. Goldfine's participation in the management of the facility after March 1987. It is possible that additional information developed during discovery will show Mr. Goldfine's participation in the management of the facility sufficient for EPA to assert his liability under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). See United States v. Fleet Factors Corp., 901 F. 2d 1550 (11th Cir. 1990) cert denied, No. 90-504 (January 14, 1991) and U.S. v. Maryland Bank & Trust Co., 632 F. Supp 573 (D. Md. 1986).

2. **Packaging Terminals, Inc.**

Contact:

Edmund Zakrocki, Jr.

Attorney:

Unknown

Agent for Service:

(registered address)
50 Laurel Street
Philadelphia, PA 19123

Incorporation:

Commonwealth of Pennsylvania, April 27, 1984. Active and in good standing (according to PA State Corporation Bureau) (Attachment 48). However, a May 21, 1993 Dun & Bradstreet report indicates that in July 1987, Ed Zanocki (sic) Vice President, stated that Packaging Terminals Inc. discontinued active operations about June 1986 and that financial obligations in the 5 figure amount existed at the time of discontinuance (Attachment 32). On May 19, 1993, directory assistance could not provide a business listing for the company. The Dun & Bradstreet notes its address was at Laurel and Canal St. and that it has no telephone number (Attachment 32). The Articles of Incorporation (Attachment 49) list Francis X. Seklecki as the incorporator.

Financial Viability:

A CERCLA § 104(e) letter was sent to Mr. Seklecki in June 1993, questions on financial status of the company are included (Attachment 50). Mr. Zakrocki was also asked about Packaging Terminals Inc.'s status, including finances (Attachment 30).

Summary of Liability:

Packaging Terminals, Inc. was an operator of the Site between at least May 17, 1985 and October 1, 1986. As such, Packaging Terminals, Inc. is a responsible party pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2) because there is evidence of 'disposal' in such period.

See Section VII.A.1 'Summary of Liability', paragraph 4 for a description of the lease pursuant to which Packaging Terminals became a tenant at Parcel "B", and the Surety Agreement accompanying the lease (see also section VII.A.4 'Theory of Liability', paragraph 3). An L&I violation notice was issued to Terminal Packaging/Frank Seklecki on August 20, 1985 (Attachment 9); the notice orders removal of all identified drums of chemicals. The L&I August 23, 1985 notice (Attachment 9) was issued to Terminal Packaging and Frank Seklecki and notes chemical spillage at the loading dock and yard.

OSHA's knowledge of the Site during Packaging Terminal's operation is described in Section V. No citations were issued during this period. However, Edmund Zakrocki indicated to EPA, in an interview conducted on November 6, 1989 (Attachment 4, Sec. I.12) that there were about 400 drums on the Site when he got there, left by Packaging Terminals, Inc. which contained solvents, blends, thinners, and acids which were disposed of

(Attachment 19). A Settlement Agreement of March 19, 1985, was entered into by Phipps Products Corp. and Packaging Terminals, Inc. and Frank Seklecki, individually and as President of Packaging Terminals, Inc. (Attachment 46). The agreement addressed, among other things, disposal of over 400 drums of chemical waste material (Phipps agreed to dispose of the drums).

Packaging Terminals Inc. will be provided notice of liability in the letter proposed to be sent to recommended defendants described in Section III.A.

Theory of Liability:

Packaging Terminals, Inc. is liable as an operator at the time of disposal under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Packaging leased the Site between March 19, 1985, and at least October 1, 1986; and disposal occurred in such period. Lessees have been held liable during period in which they leased. South Carolina Recycling & Disposal Inc., 653 F. Supp 984 (D.S.C. 1984).

3. Francis X. Seklecki

Contact:

Francis X. Seklecki
206 W. Hampshire Drive
Woodbury, NJ 08096

Attorney:

Unknown

Agent for Service:

N/A

Incorporation:

N/A

Financial Viability:

A CERCLA § 104(e) was sent to Mr. Seklecki in June 1993, which included questions on his finances (Attachment 50). A response has not yet been received.

Summary of Liability:

Francis X. Seklecki was an operator of the Site between at least May 17, 1985 and October 1, 1986. As such, Francis X. Seklecki is a responsible party pursuant to Section 107(a)(2) of

CERCLA, 42 U.S.C. § 9607(a)(2), because there is evidence of 'disposal' in such period.

Francis X. Seklecki signed the Lease and the Surety Agreement (described in Section VII.A.1 "Summary of Liability" paragraph 4 above) as President of Packaging Terminals, Inc. See Section VII.B.2 (Packaging Terminals "Summary of Liability", Paragraph 2 for a description of the relevant L&I notices and OSHA knowledge of the Site (paragraph 3)).

Francis X. Seklecki entered into the Settlement Agreement of March 19, 1985 (Attachment 4, Sec. I.12) between Phipps Products Corp., and Packaging Terminals, Inc. and himself, individually and as President of Packaging. The Agreement addressed disputes over the obligations to dispose over 400 drums of chemical waste material on the property; Phipps agreed to remove them.

Francis X. Seklecki will be provided notice of liability in the letter proposed to be sent to recommended defendants described in Section III.A.

Theory of Liability:

Francis Seklecki is liable as an operator of the facility under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for the period between March 19, 1985 and at least October 1, 1986. See discussion on operator liability in Section VII A.4 'Theory of Liability' of E.Zakrocki above.

C. Generators

When EPA began the removal action in April 1989, it obtained E-Z Chemical invoices, receipts, bills of lading, toll receipts, an index of inventory bills, general correspondence, banking account information, MSDS sheets, drumming reports, purchase orders, and a rollodex from Mr. Zakrocki. Copies of all of these documents were made and originals were returned to E-Z Chemical. These documents had been misplaced and were not located until June 1993. EPA is still, currently, reviewing these documents for any additional information.

From these documents, as well as documents and information which were gathered from CERCLA Section 104(e) responses, a list of companies who had a relationship with E-Z Chemical was compiled. Through the review, EPA was able to develop a list of companies which had packaging, blending, drumming, diluting and/or storage agreements with E-Z Chemical. The relationship was determined by information that was contained in general correspondence and/or the invoices.

The next step, in order to determine what drums each company

may have had on Site, was to compile a list of substances which were sent to the Site for repackaging, blending, drumming, diluting and/or storage by each of the companies. It was then necessary to determine from where each of these substances were purchased. In many cases, a company would buy a substance from a manufacturer and have that substance sent directly to E-Z Chemical, and therefore the drum would be labeled with the manufacturer's name (instead of the company that had the relationship with E-Z). Additionally, EPA needed to determine to whom the substances were being sold, because, for instance, a company would have E-Z Chemical repackage a product for them for a specific purchaser and would have E-Z label the containers with their purchaser's labels. These types of drums were also found on Site.

Concurrently, a review of the E-Z Chemical drum log was conducted. This drum log was compiled by TAT personnel during the removal action and included the following information: manufacturer, label information, size of drum, percent of drum contents and in some cases, where the drums were disposed. For each manufacturer, a list of drums with its labels was compiled. The lists were then compared to the companies which had packaging, blending, drumming, diluting and/or storage agreements. In order to determine what drums were attributable to each party, it was necessary to compare the lists of drums found for each manufacturer and the list of substances sent to the Site and where those substances were purchased from or to whom they were being sold. From this, EPA came up with a list which consisted of drums with responsible party names on the labels, as well as drums which were purchased from other companies.

The final step was to try to determine what was hazardous. Out of the approximately 10,000 drums that were believed to be located on the Site, EPA only conducted hazardous waste characterization analysis on approximately 2,000 drums. This was done mostly to minimize expenses, so that if a drum's contents were thought to be known, it was not tested. On the other hand, most all of the drums on which hazardous waste characterization was performed were disposed of by EPA. For each of the drums found to be attributable to a party, a review of the hazardous waste characterization results was performed.

For each of the parties listed below, the information discussed follows the outline above. It indicates the responsible party, its relationship with E-Z Chemical, what substances it sent to the Site, who those substances were purchased from, who they sold the substances to, what drums were found on Site that were attributable to them and which of those drums were determined to be hazardous. The last topic that is discussed is whether the substance(s) that they sent to the Site was found in sampling analysis performed of ground debris,

dumpsters and tanks on Site, which would indicate a disposal of that substance on Site.

EPA is currently evaluating a CERCLA § 104(e) enforcement action against some of the recommended generator defendants listed below.

1. Chemline Corporation

Contact:

Leslie Schumacher, CEO and President
Chemline Corporation
7 Vestry Lane
Levittown, PA 19054

Attorney:

Unknown

Agent for Service:

(registered address)
1300 Manor Drive
Warminster, PA 18974

Incorporation:

Incorporated in the Commonwealth of Pennsylvania, April 18, 1985, for the purpose of manufacturing industrial specialty chemicals for the pulp and paper, leather, glass, mining and metal working industries, and, also does consulting work (Attachment 79). In good standing; no information available on whether the corporation is active or not (Attachment 80).

Financial Viability:

Dun & Bradstreet reports the estimated annual sales of Chemline are $2,000,000 that the company employs 5 and has 50-100 accounts (Attachment 79). EPA estimates ability to contribute $20,000 (based on 1% of sales).

Summary of Liability:

Background

Chemline Corporation ("Chemline") had a blending, repackaging and storage agreement with either Packaging Terminals, Inc. or E-Z Chemical from September 1985 until EPA's removal action began in April 1989 (Attachment 81). Products stored, repackaged and blended on Site included, but were not limited to: Chemline defoamer, power truck wash, felt pro 50,

CLC biocide, PMB, 40-A, CLC - deinker, antistate 2, 303 dispersant, and foamstar. These products and their constituents were supplied[10] by various companies, including but not limited to: EF Houghton, Belzak Corp., Chemline, Handy Chem, Clawson, Vinings, Akzo Chemie, Alco Chemical, Cyclo Corporation, Alcolac, Callahan Chemical, Coyne, Drew, Emery, Ethyl Corporation, Phillips & Jacobs, Union Carbide, Textile, and SWS (Attachment 82). Chemline customers included, but were not limited to: Regal Paper, Lowe Paper Company, James River Paper Company, Vinings Chemical, Marcal Paper, NVF Company, Phillips and Jacobs, Exton Paper Company, and Simkins Industries (Attachment 81).

Numerous Chemline drums were found on the Site including one drum labeled ethylene dichloride, 2 drums labeled foamstar defoamer (one tested, found not to be hazardous), two drums labeled dispersant, (one found to be hazardous)[11], and five drums of unknown content, which were not tested. Some Chemline owned drums were removed by E-Z Chemical for Chemline during EPA's removal action. Belzak drums found on the Site were not found to be associated with Chemline. EF Houghton materials were found on the Site, including one drum of Stablex 573, which was the product purchased by Chemline, and 2 unknown drums on the site. The Vinings drum that was found on Site was determined not to be associated with Chemline. One drum of unknown content with an Alcolac label was found to be hazardous. The Coyne drums found on Site were determined not to be associated with Chemline. One drum of unknown content with a Drew Chemical label was found to be hazardous. Emery drums were found on the Site, including two drums of emerest 2648, and one drum of emerest 2646, products which were purchased by Chemline. One drum of EPAL 20 (alcohols & hydrocarbons), the product that Chemline purchased from Ethyl Corporation, was found on the Site and determined to be hazardous. The SWS drum and the Textile Chemical drum that were found on Site were of unknown content. Numerous drums of Union Carbide material were found on Site, including the product purchased by Chemline, niax polyol lgt 42, and two drums of

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[10] In this context, EPA means that these companies either sold materials that they purchased from a manufacturer (in a broker-type situation), or these companies are the manufacturers of the material that was purchased.

[11] By this EPA means that these drums were determined to be hazardous by hazardous waste characterization analysis. This analysis determines a number of parameters which can be used to determine if a substance is hazardous. The four parameters are set forth in 40 C.F.R. § 302.4, as corrosivity, reactivity, ignitability and toxicity. Hazardous waste characterization analysis was performed on approximately 2,000 drums at the Site for the purpose of waste segregation for disposal by EPA. The remainder of the drums were not sampled.

unknown content found to be hazardous by EPA. (Attachments 63 and 64).

Conclusion

- A drum labeled "Chemline" and "dispersant" tested characteristic under RCRA and thus contained a hazardous substance under CERCLA[12].

- Alcolac supplied products to Chemline at E-Z. A drum labeled "Alcolac" of unknown content tested characteristic under RCRA and thus contained a hazardous substance under CERCLA. EPA's review of E-Z invoices to date support that Alcolac only supplied materials at the E-Z location for Chemline.

- Drew Chemical supplied products to Chemline at E-Z. A drum labeled "Drew" of unknown content tested characteristic under RCRA and thus contained a hazardous substance under CERCLA. EPA's review of E-Z invoices to date support that Drew only supplied materials at the E-Z location for Chemline.

- Ethyl Corporation supplied products to Chemline at E-Z. A drum labeled "EPAL 20" (product purchased by Chemline from Ethyl) tested characteristic under RCRA and thus contained a hazardous substance under CERCLA. EPA's review of E-Z invoices to date support that Ethyl only supplied materials at the E-Z location for Chemline.

- Union Carbide supplied products to Chemline at E-Z. Two drums labeled "Union Carbide" of unknown contents tested characteristic under RCRA and thus contained hazardous substances under CERCLA. EPA's review of E.Z. invoices to date indicate that Union Carbide supplied materials at the E.Z. location to other companies besides Chemline.

- A drum labeled "Chemline" and "ethylene dichloride" was found on Site. It was not tested for RCRA characteristics. Ethylene dichloride is a hazardous substance under 40 C.F.R. § 302.4, but it was not found in the ground debris sampling performed (Attachment 65). [BLENDING, REPACKAGING, STORAGE AGREEMENT]

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[12] EPA can not show disposal of a particular drum through drum log records. Although the drums were numbered, the drum logs do not reflect disposal by number but by a general description. (Disposal date and location are also missing from the logs). However, if drums were not removed by a company for itself (or by E-Z for others), it was removed and disposed by EPA. In addition, EPA only tested drums for RCRA characteristics if it intented to dispose of the drums itself.

EPA Correspondence with Chemline

On May 10, 1989, Chemline provided EPA with a list of its materials which were on the Site (Attachment 83). Chemline signed a Voluntary Compliance Agreement for removal of materials on May 22, 1989, although it never removed materials from the Site (E-Z did remove some material for Chemline) (Attachment 84). By letter dated August 4, 1989, EPA sent Chemline a CERCLA § 104(e) information request, which was received on August 15, 1989 (Attachment 85). A response to the information request was sent by letter dated August 29, 1989 (Attachment 81). A second CERCLA § 104(e) information request was sent by letter dated May 19, 1993 and was received on May 21, 1993 (Attachment 86). A response to the additional request was sent by letter dated July 6, 1993 (Attachment 87).

Theory of Liability:

Chemline Corporation is liable as a person who by contract, agreement or otherwise arranged for disposal or treatment, or otherwise arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by it, at a facility owned or operated by another party or entity from which there was a release or threatened release of hazardous substances. Chemline Corporation is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

Chemline is liable as an "arranger" under two theories; one for the storage of materials and the other for the repackaging and blending of materials.

1. Storage Theory

Although CERCLA does not define the term "arranged for disposal", it is well established that Section 9607 provides for strict liability--no showing of intent or negligence is necessary. See, e.g., United States v. Bliss, 667 F. Supp. 1298, 1304 (E.D.Mo.1987). Courts have also held that since hazardous substances create problems of national scope and concern, the gaps in CERCLA should be filled with an evolving federal common law. See, e.g. Edward Hines Lumber Co. v. Vulcan Materials Co., 861 F.2d 155, 157 (7th Cir.), reh'g denied, 1980 U.S. App. LEXIS 17683 (7th Cir.1988) (noting that Congress anticipated that the common law would provide guidance in interpreting CERCLA).

In interpreting the phrase "to arrange for disposal by contract, agreement or otherwise", courts have taken a liberal approach based on CERCLA's remedial purpose and have not hesitated to look beyond defendant's characterizations to determine whether a transaction in fact involves an arrangement for the disposal of a hazardous substance. U.S. v. Aceto Agr. Chemical Corp. 872 F. 2d 1373, 1380 (8th Cir. 1989). In Aceto,

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the court found that pesticide manufacturers who sent hazardous substances to a formulator for processing could be held liable under CERCLA as arrangers for disposal because the disposal of hazardous substances (through spillage, cleaning of equipment, etc.) was inherent in the formulation process. The court noted, but did not rely upon, extensive involvement of the manufacturers in the formulation process in reaching this result. See also Jones-Hamilton v. Beazer Materials & Services, 959 F.2d 126, 131 (9th Cir. 1992), reh'g en banc denied, 973 F.2d 688 (1992) (citing Aceto with approval and holding that defendant who provided hazardous materials to a contract chemical formulator "arranged for disposal" because it retained ownership and contemplated spillage of the materials); Levin Metals Corp. v. Parr-Richmond Terminal Co., 781 F. Supp. 1448 (N.D.Cal.1991); United States v. Velsicol Chemical Corp., 701 F. Supp. 140, 142-43 (W.D.Tenn.1987).

The courts have decided in favor of imposing liability upon a seller of a product containing hazardous substances if the transaction requires or contemplates that the substance be disposed of or treated, even if the vendor intended to sell the product in the ordinary course of business. U.S. v Conservation Chemical Co., 619 F. Supp. 162 (W.D. Mo 1985). Courts have found an arrangement for disposal where there is knowledge or imputed knowledge of disposal. State of N.Y. v. General Electric Co., 592 F. Supp. 291, 297 (1984) cited in U.S. v. Aceto Agre. Chemical Corp., supra., and in Bridget States v. BFG Electroplating C.A. 87-1421, (W.D. Pa. 1990). In Bridget, the court held that a sale can be an arrangement for disposal where it was "merely a means to get rid of the hazardous substance" and that "since a disposal constitutes a release, when a sale constitutes an arrangement for a disposal, that sale is also a release."

Section 101(29) of CERCLA defines "disposal" broadly to include "discharge, deposit, injection, dumping, spilling, leaking, or placing" of any hazardous waste substance such that it "may enter the environment." 42 U.S.C. § 9601(29) (incorporating RCRA's definition of disposal located at 42 U.S.C. § 6903(3)). The definition of "storage" in RCRA, 42 U.S.C. § 6903(33) specifically excludes disposal from the definition. "The term 'storage' when used in connection with hazardous waste, means the containment of hazardous waste either on a temporary basis or for a period of years in such a manner as not to constitute disposal of such hazardous waste." See U.S. v. Amtreco, Inc., 809 F. Supp. 959 (M.D. Ga. 1992). Thus, the U.S. should argue, Chemline's storage arrangement with E-Z Chemical because of the conditions at E-Z, do not fall within the definition of storage, but rather are more properly found to be disposal. Courts have relied on the plain meaning of the definition disposal to hold that abandonment of hazardous substances constitutes arrangement for disposal under CERCLA.

See Nurad, Inc. v. William E. Hooper & Sons Co., 966 F.2d 837, 846 (4th Cir. 1992), cert. denied, 113 S.Ct. 377 (1992).

In State of California v. Verticare Inc., 1993 WL 245544 (N.D. Cal.), California sued numerous chemical distributors under CERCLA to recover the costs it incurred removing hazardous substances from the Verticare helicopter pesticide application site in Salinas, California. Verticare applied the pesticides on the growers' fields and returned unused pesticides in partially filled containers to the Verticare dock for the distributors to pick up. The sole question before the court on Defendants' motion for summary judgment was whether the chemical distributor defendants had "arranged for disposal" of hazardous substances at the Verticare Site. The State argued that this arrangement allegedly occurred by both abandonment and by what the court characterized as the "nexus" theory of liability, i.e, that knowledge and acceptance of a poorly managed site combined with knowledge and acceptance of a shortfall in the return of unused pesticides gives rise to "arranging for disposal" liability under CERCLA.

In dismissing defendants' motion for summary judgment, the Verticare court, indicating that the formulator cases are clearly analogous, held that it would be premature to rule, as a matter of law, that defendants did not have the requisite nexus with Verticare to subject them to arranger liability under CERCLA.

Chemline Corporation stored products with E-Z Chemical which were removed by EPA in a removal action. Chemline was given the opportunity to remove its drums from the Site (Attachment 1, Appendix B) as were all of the generators recommended as defendants in this litigation report. (The recommended generators are expected to argue that they were misled by EPA into believing all their drums had been removed. See Section XII. A.5.a). Many of the drums left at the Site were deteriorated, rusting and leaking. Drums were incompatibly stored and stacked dangerously high (Attachment 3). The United States should argue that these products were no longer in storage but abandoned and therefore, Chemline could be considered as having arranged for the disposal of these products. EPA also recommends that DOJ argue that knowledge and acceptance of a poorly managed site combined with ownership and control of the product gives rise to "arranging for disposal" liability under CERCLA.

2. Repackaging and Blending Theory

With regard to the repackaging and blending of materials performed by E-Z for Chemline, Chemline is liable under the Aceto (infra) theory (see discussion in Kessler Chemical Company (Theory No. 1) no. 8 below). The necessary elements (as outlined

by the Aceto Court), are present here: an agreement to have the work performed, ownership of the work in process and generation of waste through spillage, etc. Chemline knew or should have known that there would be spillage (disposal) of material during the packaging and blending processes. Also, See discussion of Jones Hamilton Beazer (infra) in Kessler's 'Theory of Liability' section. (This theory also applies to the 'drumming' and 'diluting' of materials).

2. Delmarva, Incorporated/Chemical

Contact:

John Kehl Jr., President-Treasurer
Delmarva Chemicals Inc.
7902 Belair Road
Baltimore, MD 21236

(Richard Claus)

Attorney:

Harry JJ Bellwoar, III
Schubert, Bellwoar, Mallon & Walheim
2 Penn Center Plaza, Suite 1400
1500 John F. Kennedy Boulevard
Philadelphia, PA 19102-1890

Agent for Service:

Michael A. Lakis
6701 Fordcrest Road
Baltimore, MD 21237

(registered address)
593 Skippack Pike
Bluebell, PA 19422

Incorporation:

Incorporated in the State of Maryland on February 16, 1982. In good standing, according to Maryland Corporation Bureau (Attachment 88). It became qualified to conduct business in Pennsylvania on January 21, 1986. The company wholesales chemicals (Attachment 89).

Financial Viability:

Dun & Bradstreet reports projected sales of $2,500,000 and employs 3 people (Attachment 89). EPA estimates ability to contribute $25,000 (based on 1% of sales).

Summary of Liability:

Background

Delmarva, Incorporated/Chemical ("Delmarva") began its relationship with E-Z Chemical in 1984, with blending agreements concerning gluconic acid and caustic soda (Attachment 90). In November of 1986, Delmarva entered into an agreement with E-Z Chemical, in which Oxychem sent hydrogen peroxide to the Site and E-Z Chemical diluted and packaged the hydrogen peroxide, which was then purchased by Delmarva (Attachments 91 and 92). This material was then supplied to various customers, including but not limited to: Anzon, Jones Chemical, Gehring - Montgomery, Robinson, North Chemical, Coastal Eagle, Vecheridge Chemical, Hexagon Labs, Textile Chemical, Phillips & Jacobs, Salt Services, Novick Chemical, North Industrial, Fermatech, Pottsville Bleach, Oxychem, and Feast Falls Chemical (Attachment 91).

One Delmarva drum of unknown contents was found on Site and determined to be an oxidizer[13]. There was one Oxychem drum on Site that was determined to be hazardous. One drum labeled with Textile Chemical was also found on Site, as well as 2 drums labeled with North Industrial 35% hydrogen peroxide (Attachments 63 and 64).

As part of a separate agreement, Delmarva also purchased methylene chloride from Atochem, Inc. which was sent to E-Z Chemical in tanker trucks and drummed on Site. The drums were then labeled and sent directly to Delmarva's customers; Allied Corporation, Allied Signal, & General Chemical (Attachments 92 and 93). No Atochem drums were found on Site (the materials were sent from Atochem in tanker trucks.) One drum labeled methylene chloride and Allied Chemical was found on Site (Attachment 63). Allied Chemical was found to have no arrangement(s) with E-Z Chemical. In addition, concentrations of methylene chloride were detected by EPA in tank #6, (Attachment 65) and numerous tanks were used by E-Z Chemical for storage of methylene chloride (Attachment 94). EPA also detected methylene chloride in many of the samples that were taken of the ground debris, tanks and dumpsters at the Site (Attachment 65), indicating that this substance had been spilled or leaked at the Site.

Conclusion

- Oxychem supplied hydrogen peroxide to Delmarva at E-Z. A drum labeled "Oxychem" tested characteristic under RCRA and thus contained a hazardous substance. EPA's review of E-Z invoices to

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[13]Being an oxidizer is not sufficient information in order to determine a substance hazardous under 40 C.F.R. § 302.4.

date support that Oxychem only supplied hydrogen preoxide at the E-Z location to Delmarva (however, hydrogen peroxide is not a hazardous substance under 40 C.F.R. § 302.4).

- Allied Chemical bought methylene chloride from Delmarva. Such methylene chloride was packaged at E-Z. A drum labeled Allied Chemical and methylene chloride was found at the Site. The drum contents were tested for RCRA characteristics but the results were inclusive. A review of E-Z invoices to date support that Allied's only dealings with methylene chloride at the Site were through Delmarva. Methylene chloride was found at the Site in the debris sampling (Attachment 65). [DILUTING, REPACKAGING THEORY]

EPA Correspondence with Delmarva

On August 4, 1989, EPA sent Delmarva a CERCLA § 104(e) information request. The request was received on August 8, 1989 (Attachment 95). A response was sent by Delmarva by letter dated August 13, 1989 (Attachment 92). A second CERCLA § 104(e) information request was sent by EPA to Delmarva on May 19, 1993 and was received on May 21, 1993 (Attachment 96). An extension was granted to Delmarva (Attachment 97), but no response has been received to date.

Theory of Liability

See discussion in VII.B.1 "Theory of Liability" of Chemline Corporation, Theory No. 2, 'Repackaging and Blending Theory', above.

3. Environmental Chemical Associates, Incorporated

Contact:

Eugene Streiter Jr., President-Treasurer
Environmental Chemical Associates, Inc.
10 Railroad Ave.
Marlboro, NJ 07746

Attorney:

Tom Ward

Agent for Service:

see "Contact" above

Incorporation:

Incorporated in the State of New Jersey on November 21, 1978. Corporation is active (Attachment 98).

Financial Viability:

Dun & Bradstreet indicates yearly sales are $4,510,948, net worth $76,051 and employs 14 people. Dun & Bradstreet indicates it is a wholesale distributor of chemical solvents (Attachment 99). EPA estimates ability to contribute $45,000 (based on 1% of sales).

Summary of Liability:

Background

Environmental Chemical Associates, Incorporated ("ECA") had an agreement with Packaging Terminals, Inc. and/or E-Z Chemical during at least February 1986 to December 1986 involving the storage, drumming and shipment of various products, including but not limited to: methylene chloride, n-butyl acetate, tri-perk, methyl isobutyl ketone (tank 13), 1,1,1 trichloroethane, rubber solvent, acetone, isopropyl alcohol, and freon. These materials were supplied by various companies, including, but not limited to: DuPont, Summit Resource, and Spectron. The drummed materials were then sold to other companies, including but not limited to: Pyrock Chemical, National Solvent, Gilbert Spruance, Concord Chemical, Quick, Hood, Trimont, Quaker City, Krajack, BEX, Backhaul, Alchem, Central Transport, Salem, Schwerman, Chem Fleet, Superior, Spectron, and Rite Off (Attachment 100).

Seven drums labeled ECA of unknown material found on Site were determined to be hazardous. One DuPont drum of unknown content was found on Site. Three drums of unknown content, labeled with Trimont, were found on the Site, but could not be determined to be related to the transactions with ECA. One drum labeled methylene chloride and labeled 'Hood', was found on Site and determined to be hazardous (Attachments 63 and 64). Methylene chloride is the material that ECA packaged and sold to Hood (Attachment 100, log dated August 6, 1986). Hood was determined to only purchase materials and not to have any storage agreement with E-Z Chemical (Attachment 101). National Solvents was found to have one drum of unknown contents at the Site. Two Alchem drums of unknown content found at the Site were determined to be hazardous but they cannot be linked conclusively to ECA (Attachments 63 and 64). In addition, EPA tested tanks on Site which reveal the presence of methylene chloride and methyl isobutyl ketone. EPA also found methylene chloride, acetone, methyl isobutyl ketone, freon, and 1,1,1-trichloroethane to be present in ground debris, tanks and dumpster samples taken at the Site (Attachment 65).

Additionally, ECA had a joint venture with Zakrocki on some soap based product (Attachment 102). This product is believed to be the Sandoz Chemical product that ECA had on Site. Over 100 drums of Sandoz product were found on Site, including four drums

which were determined to be hazardous and are believed to have been disposed by EPA (Attachments 63 and 64). During the EPA removal, ECA removed drums of Sandoz product, drums of other non-hazardous material and the non-hazardous contents of a tank that contained soap product (Attachment 103).

Conclusion

- Seven drums labeled 'ECA' of unknown contents tested characteristic under RCRA and thus contained a hazardous substance under CERCLA.

- ECA had methylene chloride shipped to Hood from E-Z. One drum labeled 'Hood' and 'methylene chloride' tested characteristic under RCRA and thus contained a hazardous substance under CERCLA. A review of E-Z invoices to date support that Hood purchased methylene chloride from the Site only from ECA and that Hood had no storage arrangement with E-Z.

- ECA had an agreement for the storage and drumming of, among other things, methylene chloride and methyl isobutyl ketone. Tanks on the Site revealed the presence of such chemicals, which are hazardous substances under CERCLA.

- ECA's arrangement with E-Z involved the storage and drumming of, among other things, methylene chloride, acetone, methyl isobutyl ketone, freon and 1,1,1-trichlorethane. Such substances are hazardous substances under CERCLA and were found in the sampling of ground debris at the Site (Attachment 65).

- ECA had a joint venture with E-Z regarding a soap based product. Four drums of this material tested characteristic under RCRA and thus contained a hazardous substance under CERCLA. One of these drums was removed by EPA during the removal actions. [STORAGE, DRUMMING]

EPA Correspondence with ECA

On May 22, 1989, ECA signed a Voluntary Compliance Agreement to remove its materials from the Site (Attachment 104). On August 4, 1989, EPA sent ECA a Consent Agreement and Order, which was never signed by ECA (Attachment 105). On August 30, 1989, ECA sent EPA a letter explaining the scope and plan for the removal of its materials and included a list of potential materials on the Site (Attachment 106). A CERCLA § 104(e) information request was sent by EPA on May 19, 1993, and received by ECA on May 21, 1993 (Attachment 107). A response to the information request has not been received to date.

Theory of Liability:

See discussion in VII.B.1. "Theory of Liability" of Chemline

Corporation, Theories 1 and 2, above.

4. Globe Paper Company, Inc.

Contact:

Joseph N. Freedman, President-Treasurer
Globe Paper Company, Inc.
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Philadelphia, PA 19122

Attorney:

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Dolchin Slotkin & Todd, P.C.
Suite 2000
1234 Market Street
Philadelphia, PA 19107

Agent for Service:

(registered address)
173 W. Berks street
Philadelphia, PA 19122

Incorporation:

Incorporated in the Commonwealth of Pennsylvania on December 16, 1976 for the purpose of wholesaling industrial and personal service paper such as towels, wrapping paper, etc. Active and in good standing, according to Pennsylvania Corporation Bureau (Attachments 108 and 109).

Financial Viability:

Dun & Bradstreet reports sales of $1,338,236, worth of $156,004 and employs 8 (Attachment 109). EPA estimates ability to contribute $50,000 (based on 1/3 of net worth).

Summary of Liability:

Background

Globe Paper Company, Inc. ("Globe") had an agreement with E-Z Chemical from August of 1987 to March of 1989. This agreement involved the purchase of Sun Oil products from Dunlap, Mellor & Co., which were then sent to E-Z Chemical for repackaging into smaller containers. There were three products which were sent for repackaging: Sunvis 9220, Sunvis 9100, and Sunoco Ultra 20W-50. The containers used for repackaging were supplied by E-Z Chemical, Allpak, and Canpack to Globe and sent to E-Z Chemical. The final product, one and five gallon containers of Stokes V-

Lube and Stokes B-Lube, were then sold to Stokes Vacuum (a division of Pennwalt), the company who contacted Globe to perform the work for it (Attachments 110, 111, and 112).

One drum of Stokes V-Lube which was found on the Site was not sampled. Three Sun drums of unknown contents were found on Site and determined to be hazardous. Two drums of Sunvis 9220 were found on Site and determined to be hazardous (Attachments 63 and 64).

Conclusion

- Globe had an agreement with Dunlap, Mellor & Co. for the delivery of Sun Oil products to E-Z for Globe. Three drums labeled 'Sun' of unknown contents tested characteristic under RCRA and thus contained a hazardous substance under CERCLA. EPA's review of E-Z invoices to date support that Dunlap only supplied Sun Oil products at the E-Z location for Globe; however, Sun Products were found on the Site which were not believed to be purchased by Globe.

- One of the Sun Oil products sent by Dunlap, Mellor & Co. to E-Z for Globe was Sunvis 9220. Two drums labeled 'Sunvis 9220' tested characteristic under CERCLA and thus contained a hazardous substance under CERCLA. [REPACKAGING].

EPA Correspondence with Globe

On August 4, 1989, EPA sent Globe a CERCLA § 104(e) information request, which was received on August 7, 1989 (Attachment 113). A response to the information request was sent by letter dated August 11, 1989 (Attachment 110). A second CERCLA § 104(e) information request was sent on May 19, 1993, and was received on May 20, 1993 (Attachment 114). A response to the additional request was sent by letter dated June 4, 1993 (Attachment 111).

Theory of Liability:

See discussion in VII.B.1. "Theory of Liability" of Chemline Corporation, Theory No. 2 'Repackaging and Blending Theory' above.

5. J.M.B. Industries, Inc. (U.S.)

6. Chemsource, Inc.

Contact:

Jan M. Berkowitz (President of both companies)
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Stuart, Florida 34995

Attorney:

Janet Wimmer (for J.M.B.)
Wimmer Baldwin Associates, Inc.
2029 Peabody Avenue
Memphis, Tennessee 38104-4159

Agent for Service:

Henry A. Heiman, Esq. (for both companies)
600 First Federal Plaza
702 King Street, EOX 1675
Wilmington, DE 19899-1675

Incorporation:

J.M.B. Industries, Inc. was incorporated on September 7, 1988 in the State of Delaware for the purpose of import and export of wholesale chemicals. According to a Dun & Bradstreet report, J.M.B. Industries, Inc. voluntarily dissolved April 13, 1989. Chemsource, Inc. was incorporated on October 11, 1983 in the State of Delaware. Active and in good standing according to Delaware Corporation Bureau (Attachments 115, 116, 117, and 118).

Financial Viability:

The former president of J.M.B. Industries, Inc. (and Chemsource, Inc.) indicates that upon its dissolution, J.M.B. Industries, Inc. was in the negative position of approximately $150,000 (Attachment 115). Dun & Bradstreet reports that Jan M. Berkowitz and his attorney in Delaware were handling outstanding debts (Attachments 116 and 117). Dun and Bradstreet also reports that Chemsource, Inc. stopped operations in April 1989.

Summary of Liability:

Background

J.M.B. Industries, Inc. (U.S.), ("JMB") and Chemsource, Inc. had a storage agreement with E-Z Chemical. Chemsource's began in January of 1988 and continued until EPA's removal action in April of 1989 and J.M.B.'s began November 1988 and continued until April 1989. The parties are set forth together in this section because of the invoices. Between May 1988 and November 1988, Chemsource is noted on the invoices at P.O. Box 8067, Newark, DE 19724. Between November 1988 and February 1989 some of the invoices say J.M.B. Industries, Inc., some say Chemsource, Inc. and at least two list both names. The address is listed as 250 Corporate Blvd., Suite B. Newark, DE 19702 for all of the invoices in this latter time period. In a CERCLA § 104(e) information request response, Mr. Berkowitz claims to have only sent non-hazardous silicone and styrene monomer to E-Z Chemical

(Attachment 119). From E-Z Chemicals records it is apparent that other materials were sent to the Site by JMB and Chemsource including but not limited to: glacial acetic acid, methylene chloride, isopropyl alcohol, n-methyl 2-pyrillidone, freon, perchloroethylene, 1,1,1-trichloroethane, ethylene gycol, diethylene glycol, methyl ethyl ketone, trichloroethene, Chemflor TMS (Attachment 120).

Numerous JMB-Chemsource drums were found on the Site and many suspected drums were also found. Four drums of JMB acetic acid, five drums of isopropyl alcohol and five drums of caustic soda were determined to be hazardous (Attachments 63 and 64). In addition, EPA performed analytical (full gas chromatograph analysis) on JMB-Chemsource drums of freon, trichloroethylene, trichloroethane and perchloroethylene that were to be removed (Attachment 121). Fifty-two of these drums were found to contain hazardous substances. JMB-Chemsource did not remove these products from the Site. EPA sampling results of ground debris, tanks and dumpsters at the Site indicate that there was a release of methylene chloride, 1,1,1-trichloroethane, methyl ethyl ketone, trichloroethene, and freon at the Site (Attachment 65).

Conclusion

- Four drums labeled 'J.M.B.' (and/or Chemsource) and 'acetic acid', five drums labeled 'J.M.B.' and 'isoprophyl alcohol' and five drums labeled 'J.M.B.' and 'caustic soda' tested characteristic under RCRA and thus contained a hazardous substance under CERCLA.

- Fifty-two drums labeled 'J.M.B.' and one of the following 'freon', 'trichloroethylene', 'trichloroethane' or 'perchloroethylene' were determined to contain such hazardous substances through gas chromatograph analysis.

- J.M.B. had a storage agreement with E-Z for the storage of, among other things, methylene chloride, 1,1,1,-trichloroethane, methyl ethyl ketone, trichloroethene, and freon. Such substances are hazardous substances under CERCLA and were found in the sampling of ground debris at the Site (Attachment 65). [STORAGE]

EPA Correspondence with JMB

On May 12, 1989, JMB sent EPA a list of inventory that it had stored at the Site (Attachment 122). On June 7, 1989, JMB signed a Voluntary Compliance Agreement to remove the materials that it had stored on the Site (Attachment 123). On August 8, 1989, the OSC sent JMB a memo regarding its drums which were staged for removal (Attachment 124). On August 30, 1989, the OSC sent JMB a copy of the results of the drum sampling performed by

EPA on JMB's and Chemsource's drums (Attachment 121). On November 6, 1989, EPA sent a letter to JMB, informing it that the removal action would be completed soon and that JMB materials (which included Chemsource materials) needed to be removed from the Site (Attachment 125). A CERCLA § 104(e) information request was sent by EPA by letter dated May 19, 1993 and was received on May 21, 1993 (Attachment 125). A response to the request was sent by letter dated June 2, 1993 (Attachment 119). The JMB response was determined by EPA to be insufficient. An additional response to EPA's request for information was sent to EPA by letter dated July 15, 1993 (Attachment 115). Additional information may be submitted at a later date.

Theory of Liability:

See discussion in VII.B.1. "Theory of Liability" of Chemline Corporation, Theory No. 1, 'Storage Theory', above.

7. Kessler Chemical Company

Contact:

Barry Kessler, President
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Pipersville, PA 18947

Attorney:

unknown

Agent for Service:

(registered address)
33 Old Mill Road
New Hope, PA 18938

Incorporation:

Incorporated in the state of New York on November 12, 1973 for the purpose of wholesaling and manufacturing chemicals. Kessler Chemical Company sells to chemical, pharmaceutical and dyestuff industries (Attachment 127).

Financial Viability:

A Dun & Bradstreet report indicates that the company has annual sales of $2,000,000 (Attachment 127). EPA estimates ability to contribute $20,000 (based on 1% of sales).

Summary of Liability:

Background

Kessler Chemical Company ("Kessler") has had a relationship with E-Z Chemical since 1983. E-Z Chemical served as a toll packager and formulator of various products for Kessler (Attachment 128). On December 1, 1983, a secrecy agreement was signed between Kessler and E-Z Chemical for the formulation of a product called D-10 (Attachment 129). D-10 was formulated from biosoft, perchloroethylene, amine 6, methylene chloride and methanol using specifications supplied by Kessler (Attachment 130). These products were either purchased from E-Z Chemical or purchased by Kessler and sent to E-Z Chemical (Attachment 131).

Additionally, Kessler had at least two other joint agreements (it is unknown whether secrecy agreements exist for these ventures, but they involve the same requirements of the secrecy agreement of December 1, 1983). One of Kessler's agreements involved phenol repackaging and formulating and was a joint venture with Trimont Chemical. Various specifications for repackaging were supplied by Trimont and Kessler for each batch of phenol that was repackaged (Attachment 132). Another agreement involved aniline, which was supplied by Kessler for E-Z Chemical to repackage into Moroso Performance Products, Inc. containers for Moroso Performance Products, Inc. (Attachment 133).

Kessler also used E-Z Chemical as a packager and storage facility for other materials, including but not limited to: ortho-nitrochlorobenzene, nitro-methane, xylene, methyl cyclopentadienyl magnese tricarbonyl, toluene, hexane, monoethanolamine, n-butyl acetone, n-methyl pyrrolidone, diphenol amine, dichloromethane, ethyl ether, alpha methyl styrene, phosphorus trichloride, n,n-diethyl aniline, n,n-dimethyl aniline, diethyl ether, sulfamic acid, sebacic acid, n-butanol, and butyl alcohol. These products were purchased from various companies, including but not limited to: Monsanto, J.T. Baker, Eastman Kodak, Va Brunt Warehouse, Merchantile Development, Ciba-Geigy, Tose-Fowler, Quaker, Tilley, Aristech, Bush Boake Allen Canada, Ladner Inc., Savage, and Fisher Scientific (Attachment 134). Kessler supplied these materials to many different companies (Attachments 131, 132, 133, and 134).

During the removal action, Kessler arranged for removal of a number of its drums that were found on Site (Attachment 135). The remaining drums were disposed of by EPA. These drums included, but were not limited to: one drum of unknown content, one drum of aniline, one drum of ethyl ether, one drum of phenol and one drum of unknown content from JT Baker, all of which were determined to be hazardous (Attachments 63 and 64) (EPA also removed four other JT Baker drums but these were not tested). Upon analysis of ground debris, dumpsters and tanks at the E-Z Chemical Site, EPA found phenol, methylene chloride, xylene, and

toluene, indicating a release of these substances at the Site (Attachment 65).

Conclusion

- One drum labeled 'Kessler' and 'aniline', one drum labeled 'Kessler' and 'ethyl ether', one drum labeled 'Kessler' and 'phenol', and one drum labeled 'Kessler' of unknown content tested characteristiic under RCRA and thus contained a hazardous substance under CERCLA.

- Kessler had an arrangement for storage and packaging with E-Z. JT Baker sold product to Kessler and had it delivered to the Site. One drum labeled 'JT Baker' of unknown content tested characteristic under RCRA and is thus a hazardous substance under CERCLA. EPA's review of E-Z invoices to date indicate that Kessler was the main (possibly only) purchaser of products from J.T. Baker who had products sent to E.Z. However, numerous lab packs were found on the Site with J.T. Baker labels, but may have been left at the Site by a previous tenant.

- Kessler had a formulation agreement with E-Z, for, among others, the formulation of a product that included methylene chloride. Kessler had a formulation-repackaging agreement with E-Z including phenol. Kessler had a storage-packaging agreement with E-Z for, among other things, xylene and toluene. Methylene chloride, phenol, xylene and toluene were found in the sampling performed of ground debris (Attachment 65).

EPA Correspondence with Kessler

On April 14, 1989, Kessler supplied EPA with a list of inventory at the E-Z Chemical Site (Attachment 136). On April 19, 1989, Kessler signed a Voluntary Compliance Agreement to remove the materials that it had stored on the Site (Attachment 137). On August 4, 1989, EPA sent Kessler a CERCLA § 104(e) information request, which was received on August 10, 1989 (Attachment 138). On October 9, 1989, Kessler responded to the information request (Attachment 128). A second CERCLA § 104(e) information request was sent by EPA on May 24, 1993 and was received on May 25, 1993 (Attachment 139). On July 16, 1993, a CERCLA § 104(e) nudge letter was sent to follow up on the May 24, 1993 letter and the green card was signed on July 20, 1993 (Attachment 140). EPA is currently awaiting a response to this letter, no response has been received to date.

Theory of Liability

Kessler Chemical Company is liable as a person who by contract, agreement or otherwise arranged for disposal or treatment, or otherwise arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by it, at a facility owned or operated by another party or entity from which there was a release of threatened release of hazardous substances. Kessler Chemical Company is therefore liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

Kessler is liable as an "arranger" under two theories, one under Aceto (infra) for formulation of a chemical product, also under Aceto for repackaging and blending (see Chemline, Theory of Liability No. 2) and the second theory for 'storage' of materials.

Aceto Theory

In interpreting the phrase "to arrange for disposal by contract, agreement or otherwise", courts have taken a liberal approach based on CERCLA's remedial purpose and have not hesitated to look beyond defendant's characterizations to determine whether a transaction in fact involves an arrangement for the disposal of a hazardous substance. U.S. v. Aceto Agr. Chemical Corp. 872 F. 2d 1373, 1380 (8th Cir. 1989). In Aceto, the court found that pesticide manufacturers who sent hazardous substances to a formulator for processing could be held liable under CERCLA as arrangers for disposal if they retained ownership of the work in process and generation of waste (through spillage, cleaning of equipment, etc.) was inherent in the formulation process. The court noted, but did not rely upon, extensive involvement of the manufacturers in the formulation process in reaching this result. Similarly, in United States v. Velsicol Chemical Corp., 701 F. Supp. 140 (W.D. Tenn., 1987), the Court held that since the defendants had contracted for the formulation of a pesticide and supplied the pesticide ingredients for the formulation, the defendants might be liable for wastes generated as a result of the manufacturing operation. More directly on point, however, is Jones-Hamilton v. Beazer (supra). The 9th Cir. considered whether a company which entered into an agreement with a contract chemical formulator for formulation of wood preservation compounds was liable as an 'arranger for disposal'. The Court cites Aceto with approval and notes the company retained ownership of the materials and contemplated spillage. The Court finds that "[I]t is clear under the agreement that Beazer [the company] 'arranged for disposal' of toxic substances within the meaning of section 9607." pg 131.

The courts have decided in favor of imposing liability upon a seller of a product containing hazardous substances if the transaction requires or contemplates that the substance be disposed of or treated id., even if the intent was to sell the product in the ordinary course of business. U.S. v Conservation

Chemical Co., 619 F. Supp. 162 (W.D. Mo 1985). Courts have found an arrangement for disposal where there is knowledge or imputed knowledge of disposal. State of N.Y. v. General Electric Co., 592 F. Supp. 291, 297 (1984) cited in U.S. v. Aceto Agre. Chemical Corp., supra., and in Bridget States v. BFG Electroplating C.A. 87-1421, (W.D. Pa. 1990). In Bridget, the court stated that a sale can be an arrangement for disposal where it was "merely a means to get rid of the hazardous substance" and that "since a disposal constitutes a release, when a sale constitutes an arrangement for a disposal, that sale is also a release."

Other courts, when interpreting liability under Section 107(a)(3), have held that the mere sale of a product cannot be considered an arrangement for disposal. Edward Hines Lumber v. Vulcan Materials Co., 711 F. Supp. 1257 (D.N.J. 1987); Jersey Power & Light Co. v. Allis-Chalmers Corp., 893 F. 2d 1313 (11th Cir. 1990), Kelly v. ARCO K87-372C4 (WD Michigan 1990). These courts have relied on the motivation behind the sale; if a useful product containing a contaminant is sold in order to make a profit in the ordinary course of business, no liability arises. But in recent cases, courts have been selective, and rejected attempts to establish a per se rule excluding the sale of useful products from the scope of arrangements for disposal or treatment. Florida Power & Light Co. v. Allis-Chalmers Corp., id. Clearly, there is sufficient case law to determine that a transaction can in fact constitute an arrangement for the disposal of a hazardous substance.

The evidence reflects that Kessler Chemical Company was the owner of products that contained hazardous substances and that a new product (D-10) was formulated by E-Z Chemical using specifications provided by Kessler and that other products owned by Kessler were repackaged by E-Z Chemical according to specifications provided by Kessler. Similar to the facts in the Aceto case, Kessler retained ownership of its product throughout the reformulation and packaging process. Kessler knew or should have known that there would be spillage (i.e "disposal") in the reformulation process.

Furthermore, EPA has evidence that Kessler knew that its hazardous substances were being disposed of by E-Z Chemical. In an April 10, 1986 letter, Barry Kessler, President of Kessler Chemical Company, informs Ed Zakrocki of E-Z Chemical of a planned visit by Monsanto Chemical to E-Z Chemical and indicates that E-Z Chemical should cleanup all evidence of chemical spills in the drumming room, adjoining loading dock and outside tank/truck loading area (Attachment 141). E-Z Chemical, in an invoice to Kessler Chemical Company, dated December 10, 1988, assesses Kessler $250.00 for the cleanup of a product spill (Attachment 142). Therefore, Kessler could not have hired E-Z Chemical to reformulate its products without also "arranging for"

the disposal of its waste.

Storage Theory

See Chemline Corporation, 'Theory of Liability', Theory No. 1, 'Storage Theory'.

8. Morgan Materials, Incorporated

Contact:

Donald Sadkin, President
Morgan Materials Incorporated
5500 Main Street
Williamsville, NY 14221

Attorney:

James F. Allen
Allen, Lippes & Shonn
1260 Delaware Avenue
Buffalo, NY 14209-2498

Agent for Service:

Unknown

Incorporation:

Morgan Materials, Incorporated was incorporated in the State of New York on February 21, 1966 for the purpose of wholesaling organic chemicals, plastic materials, and crude rubber (Attachment 150).

Financial Viability:

EPA estimates that Morgan Materials has the ability to contribute $250,000 (Attachment 55).

Summary of Liability:

Background:

Morgan Materials, Incorporated, a.k.a. Morgan Chemicals, ("Morgan") had an agreement with Packaging Terminals, Inc. to utilize storage tanks on Site beginning in July 1985 until June 1986. Morgan had an agreement with E-Z to utilize the tanks beginning in September 1986 and continuing until EPA's removal action in April of 1989. The materials were sent to E-Z Chemical in tank trucks and transferred to the tanks upon arrival at the

Site (Attachments 151 and 152). Products that Morgan sent to the Site included, but were not limited to: o-cresol, plasticizer, polybutene, cresylic acid, tetraethylene glycol, isodecyl alcohol, and cadmium pigment. These materials were purchased from various suppliers, including but not limited to: Union Carbide, Hatco, Amoco, Conoco, and Exxon. Morgan sold these materials to: United Technology, Hood Products, Ambion Corporation, Beecham Home Improvement, Chicago Magnet Wire, Cone Solvents, DAP Inc., Girafco Colloids, Hudson Viking, Kemex, Mohawk Labs, Non-fluid oil, Release Coatings, Midland Corporation, Speed Clean, Suffolk Chemical, Technicarbon, NCH Corporation, Independent Chemical, Schenectady Chemical, Industrial Chemical, Chemical Systems, Chemical and Solvents, and Chembrite (Attachments 152 and 153).

One drum labeled 'Morgan'and 'cresylic acid' was found on the Site (Attachment 63). Morgan removed cresylic acid and tetraethylene glycol, which was stored in tanks on Site during EPA's removal action (Attachment 154). EPA sampling of on Site ground debris indicated levels of p-cresol and cadmium (Attachment 65). Additionally, sampling of Tank #1 on Site revealed that the brown viscous liquid that was contained in it had a pH of 1, and was therefore hazardous as a RCRA characteristic (Attachment 64). This material is believed to be the remnants of the cresylic acid removed by Morgan based on the color, viscosity and pH of the material. Also cresylic acid is a hazardous substance listed under 40 C.F.R. § 302.4, although it was not analyzed for in the sampling performed (See Section VI.A.1 above). However, cresylic acid is a combination of all three types of cresol (m,p, and o) and p-cresol was found in the ground debris. The Merck Index, (10th Ed., Martha Windholz, Merck & Co., Inc. Rahway, N.J. 1983) pg 369 indicates "... cresylic acid ... mixture of the three isomeric cresols."

Conclusion

- A drum labeled 'Morgan' and 'cresylic acid' tested characteristic under RCRA and thus contained a hazardous substance under CERCLA.

- Morgan had an agreement with E-Z for the storage of, among other things, o-creosol and cadmium. Both these substances were found in the sampling performed of ground debris (Attachment 65).

- Remnants in Tank #1 tested characteristic under RCRA and thus contained a hazardous substance under CERCLA. Through expert testimony, the United States can attempt to establish that such remnants, based on color, viscosity and pH were likely cresylic acid. (Cresylic acid is a hazardous substance under 40 C.F.R. § 302.4. [STORAGE]

EPA Correspondence with Morgan

Morgan signed a Voluntary Compliance Agreement for removal of materials on May 27, 1989 (Attachment 151). On August 4, 1989, EPA sent Morgan a CERCLA § 104(e) information request, which was received on August 8, 1989 (Attachment 155). A response to the information request was sent by letter dated August 14, 1989 (Attachment 153). A second CERCLA § 104(e) information request was sent on May 24, 1993 (Attachment 156). A response to the additional request was sent by letter dated June 26, 1993 (Attachment 152).

Theory of Liability:

See discussion in VII.B.1. "Theory of Liability" of Chemline Corporation, Theory No. 1, 'Storage Theory'.

VIII. PARTIES ASSOCIATED WITH THIS SITE BUT NOT INCLUDED IN THIS ACTION

A. Potential Owner/Operators Not Recommended

1. Jean Goldfine
2. Lillian Biron

The two individuals named above owned Parcel "B" between April 18, 1972 and September 17, 1984, (with Leonard and Stanley Goldfine). Although there is a City of Philadelphia L&I violation notice of January 11, 1984 issued to Leonard Goldfine to remove a leaking tank (Attachment 9), it is unclear to which parcel the notice applies.

EPA does not consider it has sufficient evidence to recommend naming Jean Goldfine and Lillian Biron.

3. Stanley Goldfine
   5688 Ainsley Ct.
   Boynton Beach, FL 33437

Stanley Goldfine owned Parcel "B" between April 15, 1972 and September 17, 1984 (with Jean Goldfine, Leonard Goldfine and Lillian Biron) (Attachment 7). However, Stanley Goldfine also appears to have been a trustee of a portion of Parcel "A" which encroached on what was thought to be Parcel "B" of "C" on March 23, 1988 when a new deed was executed with respect to Parcel "C" (Attachment 8) to correct "minor overlaps and encroachments" (See Attachments 40 and 51). EPA cannot recommend naming Mr. Stanley Goldfine until a further investigation is undertaken as to his status as 'trustee'. EPA intends to send Mr. S. Goldfine a CERCLA § 104(e) shortly but does not recommend naming him at this time.

4. Phipps Products Corporation
186 Lincoln St.
Suite 502
Boston, MA 02111

Although Phipps Products Corporation hired Packaging Terminals, Inc. for the handling, packaging, storage and shipping of chemical products, ultimately arranged for disposal of waste materials from the Site (See Section VII. B.1 above) and notified EPA that it was a small quantity generator (and listed E-Z as its location) and is thus a responsible party pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2); the Massachusetts Secretary of State indicated Phipps was a Massachusetts Corporation incorporated on October 21, 1949 but that the company had dissolved. As of April 27, 1992, directory assistance had no listing for the company.

5. Edmund L. Zakrocki, III
2566 E. Westmoreland St.
Philadelphia, PA

Although Edmund L. Zakrocki, Jr.'s son, Edmund L. Zakrocki, III, operated E-Z Chemical along with his father from EPA's OSC's observations throughout the removal action, and he is listed as an E-Z director in a March 17, 1987 unanimous action resolution of E-Z to purchase the stock of Laurel Street Corporation and 950 Canal Street Corporation (Attachment 52), EPA recently sent Mr. Zakrocki, III a CERCLA § 104(e) letter which was returned with a handwritten notation on the envelope indicating that Mr. Zakrocki, III is deceased. EPA is attempting to confirm his demise from other sources.

B. Generators Not Recommended Because of Lack of Financial Resources

Although a prima facie case can be established for the parties set forth in this section, EPA does not recommend them because of an apparent lack of financial resources. Should EPA obtain aditional information prior to filing of the complaint on any of these parties which indicates it may be viable, EPA may recommend that it be named.

1. Alchem Products, Inc.

Contact:

John G. Taylor, CEO and President
Alchem Products, Inc.
P.O. Box 137
Newtown Square, PA 19073

Attorney:

David T. Videon

Agent for Service:

(registered address)
106 Main Street
Newtown, Square, PA 19073

Incorporation:

Commonwealth of Pennsylvania, January 12, 1987. Active and in good standing (according to Pennsylvania Corporation Bureau (Attachment 53)). According to a Dun & Bradstreet report, Alchem Products, Inc. is a manufacturer of industrial chemicals, intermediate and high purity chemicals (Attachment 54).

Financial Viability:

Dun & Bradstreet reports that the projected annual sales are $1,000,000 (Attachment 54). EPA estimates that Alchem Products has the ability to contribute $8,000 (Attachment 55).

Summary of Liability:

During the period between February 1986 and the beginning of EPA's removal action, in April 1989, Alchem Products, Inc. utilized the E-Z Chemical Site for the storage of various products, including, but not limited to: alumina, benzothiazole, carbon disulfide, carbox wax - MPEG 30, chrome ore, ethylene dichloride, hydrofluoric acid 70%, klearol, lead nitrate, methyl ethyl ketone, monochlorobenzene, orthodichlorobenzene, petroleum naphtha, phenol 99% technical, propylene oxide, sulfuric acid reagent, trichlorobenzene technical, zinc sulfate, fluoboric acid 48%, piperzine hydrochloric acid, propylene glycol technical, sodium silicofluoride, and sulfamic acid technical (Attachments 56 and 57). These materials were supplied through various companies, including, but not limited to: Ahart Chemical Co., Boam Chemicals, Inc., E-Z Chemical, Environmental Chemical Associates Incorporated, Laporte Industries, O'Neill Industries, Pennwalt Corporation, Pyramid Chemical, Union Carbide, Monsanto, Stauffer Chemical, Arco Chemical, Coyne Chemical, and Witco Chemical (Attachments 57, 58 and 59). Alchem Products supplied (sold) their products to many other companies, including, but not limited to: Kraus Chemical Co., Mid Atlantic Chemical, Reed Supply Company, Ashland Chemical Co., SouthChem, Inc., Leatex Chemical Co.(Attachments 60, 61 and 62).

During EPA's removal action, drums were found which displayed labels from Alchem Products, E-Z Chemical, Environmental Chemical Associates, Laporte Industries, Pennwalt

Corporation, Pyramid Chemical, Union Carbide, Monsanto, Arco Chemical, Coyne Chemical, and Witco Chemical (Attachment 63). Of the Alchem drums, two drums, whose contents were unknown, were found to be hazardous, three drums of hydrofluoric acid were found to be hazardous, one drum of fluoroboric acid was found to be hazardous and one drum of ethylene dichloride was found to be hazardous. The E-Z Chemical drums on Site were found not to be related to Alchem, although there was one drum of unknown content found to be hazardous. No ECA drums were found to be connected with Alchem, although 7 drums of unknown content were found to be hazardous. Four Laporte drums which were believed to be hydrofluoric acid were found, but were not tested for their contents. One drum of unknown content, labeled with Pyramid, was found to be hazardous. Union Carbide drums were also found on Site, including two drums of carbowax - MPEG 350, which were not tested, and two drums of unknown material found to be hazardous. One drum of unknown content, labeled with Monsanto, was found to be hazardous. No Arco drums found were associated with Alchem. One drum of Coyne hydrogen peroxide, a product which Alchem purchased from Coyne, was found to be hazardous. No Witco drums were found to be associated with Alchem (Attachments 63 and 64). In addition, methyl ethyl ketone, dichlorobenzene, and trichlorobenzene, substances which Alchem sent to the Site were detected in sampling of ground debris, soil and tanks that EPA performed at the Site (Attachment 65). Also, hydrofluoric acid and ethylene dichloride are hazardous substances listed under 40 C.F.R. § 302.4 although they were not analyzed for in the debris, and dumpster tank samples (See Section VI.A.1 above). Alchem removed drums during EPA's removal action and transported them to Murd Company, American Freight, Woodard and Dickerson, and SouthChem (Attachments 62 and 63).

EPA Correspondence with Alchem Products, Inc.

On April 28, 1989, Mr. John Taylor had a brief meeting with EPA employee, Christopher Thomas, about the Alchem material on the Site. A follow-up letter was then written by Mr. Taylor to EPA on May 4, 1989 (Attachment 66). On May 16, 1989, Alchem Products, Inc. signed a Voluntary Compliance Agreement (Attachment 67). Alchem was sent a CERCLA § 104(e) letter on August 4, 1989, which was received on August 8, 1989 (Attachment 68). Alchem Products, Inc. responded to this letter on August 16, 1989 (Attachment 69). On November 6, 1989, EPA informed Alchem that the EPA removal would be completed shortly and that all Alchem product needed to be removed within seven days of receipt of the letter (Attachment 70). On May 24, 1993, EPA sent a second CERCLA § 104(e) to Alchem. The letter was received on May 26, 1993 (Attachment 71). A response to the May letter was sent by letter dated June 15, 1993 (Attachment 60).

2. Arrow Chemicals

Contact:

Michael F. Fegan, President
Arrow Chemicals (Technichem, Inc.)
P.O. Box 1378
5 West Park Avenue
Merchantville, NJ 08109

Attorney:

Vincent Glorisi

Agent for Service:

unknown

Incorporation:

Incorporated in the state of New Jersey on February 1, 1986 for the purpose of wholesaling industrial chemicals such as alcohols, acids and solvents (Attachment 72).

Financial Viability:

Dun & Bradstreet indicates that the company's yearly sales are $1,800,000. It has a net worth of $121,813 and employs 6. EPA estimates Arrow has the ability to contribute $40,000 (based on 1/3 of net worth).

Summary of Liability:

Arrow Chemicals ("Arrow") had a business relationship with E-Z Chemical since 1986, when Arrow began to purchase products from E-Z Chemical (Attachment 73). Arrow Chemicals had a storage agreement with E-Z Chemical from December of 1987 until EPA's removal action in April of 1989 (Attachment 74). In 1988, Arrow had an agreement with E-Z Chemical to drum acetone (Attachment 75). Other materials that Arrow stored at E-Z Chemical included, but were not limited to: zinc ammonia chloride, chromic acid (solid), sodium chlorite, ethylene glycol, anti-freeze, ammonium bifluoride, poly vinyl alcohol, sodium metabisulfite, methyl ethyl ketone, phosphoric acid, hydrochloric acid, ammonium hydroxide, sulfuric acid, hydrogen peroxide, potassium hydroxide, and caustic potash (Attachment 73). These materials were supplied by various companies, including but not limited to: JLM, Min Resch, Alloy Chemical, Advent, General Plastic, Hampton, Sattva, Stockton Sales, Manley-Reg, MacArthur, Browning, Owens Corning, Kramer, and E-Z Chemical (Attachments 73 and 74). Arrow supplied these materials to various companies including, but not limited to: Puratex, E-Z Chemical, and Allyn Preserved (Attachment 76).

One Arrow drum of unknown contents and one Arrow acetone

drum that was determined to be hazardous were found on Site. One Kramer drum of unknown content that was determined to be hazardous was also found on Site (Attachments 63 and 64). In addition, zinc, chromium, acetone and methyl ethyl ketone were detected in sampling analysis of ground debris, tanks, and dumpsters performed by EPA at the Site (Attachment 65).

EPA Correspondence with Arrow Chemicals:

On August 4, 1989, EPA sent Arrow Chemicals a CERCLA § 104(e) letter. This letter was received on August 9, 1989 (Attachment 77). A response to the CERCLA § 104(e) letter was sent by letter dated August 16, 1989 (Attachment 74). A second CERCLA § 104(e) letter was sent on May 24, 1993 (Attachment 78). No response has been received to date.

3. KRC Research Corp.

Contact:

Edmund A. Drazga, President
315 N. Washington Street
Moorestown, NJ 08057

Attorney:

Unknown

Agent for Service:

Lee Silverstein
1 Executive Campus
Rt. 70 and Cuthbert Blvd.
Cherry Hill, NJ 08002

Incorporation:

KRC Research Corporation was incorporated on May 1, 1964, in the state of New Jersey, for the purpose of being general contractors of residential and industrial buildings (Attachment 143 and 144). This corporation is active.

Financial Viability:

The Dun & Bradstreet report indicates that annual sales are $50-60,000. 100% of capital stock is owned by President (above), employs 2 (Attachment 144). According to President, KRC has had no employees since 1990, president is 74 years old and company will be dissolving in 1993 (Attachment 145). EPA estimates that KRC has the ability to contribute $25,000 (Attachment 55).

Summary of Liability:

KRC Research Corporation, a.k.a. Chemique, ("KRC") began a relationship with E-Z Chemical in February 1986, when it began to purchase products from E-Z Chemical. The products purchased by KRC from E-Z Chemical include but are not limited to: methylene chloride, hydrofluoric acid, xylene, hydrogen peroxide, butyl cellosolve, phosphoric acid dimethyl sulfoxide, and TEA (Attachment 146). Later, in 1987, KRC contracted with E-Z Chemical to blend a product, brass copper dip, which consisted of materials including but not limited to: chromic acid, hydrofluoric acid, and hydrogen sulfate. The chromic acid used in the blending of the brass copper dip was purchased from Arrow Chemical. E-Z Chemical would also pick-up the empty drums of KRC product at KRC's facility, such as KRC-7 and TEA. (Attachment 147).

Both Chemique and KRC drums were found on Site. Six of the drums (believed to be KRC Restorer Cleaner) are consistent, having a pH of 1[14], and two additional were also determined to be hazardous (Attachment 63 and 64). In addition chromium was detected in EPA sampling of the ground debris, dumpsters and tanks at the Site (Attachment 65).

EPA Correspondence with KRC

On August 4, 1989, EPA sent KRC a CERCLA § 104(e) information request, which was received on August 7, 1989 (Attachment 148). A response to the information request was sent by letter dated August 10, 1989 (Attachment 147). A second CERCLA § 104(e) information request was sent on May 24, 1993 and was received on May 25, 1993 (Attachment 149). A response to the additional request was received by EPA and is undated (Attachment 149).

4. Puratex Company

Contact:

Fred Kuehne
Puratex Company
6714 Wayne Avenue
Pennsauken, NJ 08110

Attorney:

Timothy J. Higgins
Quinlan, Dunne, Daily & Higgins
16 North Centre Street

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[14]Substances which have a pH of less than 2.5 are determined to be hazardous as a RCRA characteristic of corrosivity under 40 C.F.R § 302.4.

Merchantville, NJ 08109-2519

Agent for Service:

Unknown

Incorporation:

Incorporated in the state of New Jersey on May 2, 1969, for the purpose of wholesaling industrial chemicals (Attachment 162).

Financial Viability:

Puratex Company has 75 accounts, but net worth and annual sales are unknown (Attachment 162).

Summary of Liability:

During 1987, Puratex arranged for tank trucks of sulfuric and muriatic acid to be delivered to the Site and drummed by E-Z Chemical. The drummed products were then to be delivered to Puratex customers (Attachment 163). One drum of Puratex sulfuric acid was found on Site, but was not tested due to belief that the product on the label indicated its contents (Attachment 63). Sulfuric acid is a hazardous substance listed under 40 C.F.R. § 302.4.

EPA Correspondence with Puratex

On August 4, 1989, EPA sent Puratex a CERCLA § 104(e) information request, which was received on August 7, 1989 (Attachment 164). A response to the information request was sent by letter dated August 16, 1989 (Attachment 163). A second CERCLA § 104(e) information request was sent by letter dated May 24, 1993 (Attachment 165). A request for an extension letter was dated June 24, 1993 (Attachment 166). A CERCLA § 104(e) nudge letter was sent by letter dated July 16, 1993 (Attachment 167). An extension was granted to Puratex and EPA has not received a response to date.

5. Syed Associates, Inc.

Contact:

Syed Naqvi

Attorney:

Unknown

Agent for Service:

Syed Associates
PO Box 2339
Church Street Station
New York, NY 10008-2339

Incorporation:

Syed Associates, Inc. was incorporated in the State of New York on April 11, 1989 and no dissolution has been filed (Attachments 175 and 176).

Financial Viability:

Unknown

Summary of Liability:

Syed Associates ("Syed") had an agreement with E-Z Chemical for storage of materials at the Site from July of 1987 until EPA's removal action in April of 1989. The materials that Syed stored on Site included, but was not limited to: ethylene glycol, glycerine, dimethyl formamide, methyl ethyl ketone, tetrahydrofurane, pyrridine, acetone, hexane, methanol, xylene, isopropanol, toluene, 1,1,1-trichloroethane, methylene chloride, trichloroethylene, phosphoric acid, potassium hydroxide, trichlorotrifluoroethane, sodium hydroxide, ethyl acetate, n-butanol, dimethyl sulfoxide, methyl isobutyl ketone, monochlorobenzene, tetrachlorobenzene, methyl cellusolve, Exxon aromatic 150, mineral oil (bath oil), ethylene diamine, stripper rinse, isobutanol, ethylene glycol methyl ether, benzene, acedic acid, perchoroethylene, neu-tri, isopropylmyristate, formaldehyde, brij 35, disodium lauryl sulfosuccinate, black paint, mazoot oil, capryl alcohol, alkaterge E, emulphor - on, span-85, glycomul soc, Atlox G1086, silicone Y5560, hot bodied soya, sodium perborate, resin solution, deicing fluid, petroleum ether, hydrofluoric acid, polyethylene glycol, diphenol oxide, and methyl decyl phthalate. These materials were supplied through various suppliers including but not limited to: Fisher, Classic Chem, WAS Termi., ICI Americas, General Motors, Octagon, Reichold, Mallinkrodt, MacKesson, Emery, and Self (Attachment 177).

Numerous Syed drums were found on Site (Attachment 63). Many of them were staged for removal by Syed, but when the drums were picked up, some were left due to the poor condition of the drums (Attachments 178 and 179). Two of the rejected drums, one drum of methanol and one drum of unknown content that had Syed's labels on them were found to be hazardous. Also located on the Site were two drums of Mallinkrodt hydrofluoric acid, the product which Syed purchased and stored on Site, and two Mallinkrodt drums of unknown content were determined to be hazardous. One Reichold Chemical drum of unknown content was found at the Site

(Attachment 63 and 64). In addition, methyl ethyl ketone, acetone, xylene, toluene, 1,1,1-trichloroethane, methylene chloride, trichloroethylene, and methyl isobutyl ketone were found in samples taken of the ground debris, tanks and dumpsters at the Site, indicating a release of these substances (Attachment 65). Also, methanol and hydrofluoric acid are hazardous substances listed under 40 C.F.R. § 302.4, although they were not analyzed for in the performed sampling (See Section VI.A.1 above).

EPA Correspondence with Syed

On April 26, 1989, Syed signed a Voluntary Compliance Agreement to remove materials from the Site (Attachment 180). On April 27, 1989, EPA sent a letter to Syed thanking it for removing products on the Site and requesting documentation on the destination of the materials (Attachment 181). On August 4, 1989, EPA sent Syed a CERCLA 104(e) information request, which was returned unclaimed (Attachment 182). By letter dated October 5, 1989, another CERCLA § 104(e) information request was sent. No green card was returned, nor was a response received (Attachment 183). A second CERCLA § 104(e) information request was sent by letter dated May 19, 1993 and received on May 25, 1993 (Attachment 184). A CERCLA § 104(e) nudge letter was sent by EPA by letter dated July 16, 1993 (Attachment 185). On July 29, 1993, EPA received a phone call which indicated that the CERCLA § 104(e) letter had been sent to the wrong address. An investigation of the correct address will continue.

6. Trimont Chemical, Inc.
7621 Little Avenue
Suite 420
Charlotte, NC 28226

Contact:

Norman Beaucamp, President
11518 Glenn Abbey Way
Charlotte, NC 28277

Attorney:

unknown

Agent for Service:

Resigned; no new agent appointed.

Incorporation:

Trimont Chemical was incorporated in North Carolina on March

10, 1985, for the purpose of wholesaling industrial chemicals. The corporation is reported as active and in good standing but it is also reported that an administrative 'notice of dissolution' was sent to the corporation and that it has not responded (Attachments 186 and 187).

Financial Viability:

Dun & Bradstreet reports that the company ceased operations and has outstanding debts (Attachment 187).

Summary of Liability:

Trimont Chemical, Inc. ("Trimont") had a joint venture agreement with Kessler Chemical Company and E-Z Chemical from 1983 to January 1, 1989, which dealt with the repackaging of phenol [It is unclear whether the arrangement was with Trimont Chemical, Inc. or Trimont Charlotte Corporation. EPA is investigating. However, the N.C. Corporation Bureau reports that the latter was also administratively dissolved (February 23, 1993) (Attachment 186)]. This agreement involved the purchase of phenol by Trimont, who then delivered the product to E-Z Chemical, E-Z Chemical would then repackage the phenol, using the specifications that were supplied by Kessler Chemical. On January 1, 1989, Trimont sold its share of the joint venture to Kessler (Attachments 132 and 188). In addition, Trimont had drums of ether and paraffin stored at E-Z Chemical (Attachment 189).

During EPA's removal action, drums labeled Trimont/Kessler and labeled phenol were found on the Site (Attachment 63). None were tested for RCRA characteristics. Some were tested using a Draeger test, which indicated the presence of phenol in some of the drums but it is unknown whether EPA disposed of those drums where pheonol's presence was confirmed or whether Kessler or Trimont removed them. However, phenol was identified in the analytical sampling of ground debris, tanks and dumpsters at the Site (Attachment 65).

EPA Correspondence with Trimont

By letter dated May 1, 1989, Trimont sent EPA a list of its inventory at the Site (Attachment 189). On May 17, 1989, Trimont signed a Voluntary Compliance Agreement to remove products from the Site (Attachment 190). By letter dated August 4, 1989, EPA sent Trimont a CERCLA § 104(e) information request, which was returned to EPA unclaimed (Attachment 191). On October 3, 1989, a CERCLA § 104(e) nudge letter was sent and received on October 10, 1989 (Attachment 192). On October 9, 1989, a fax of the original CERCLA § 104(e) information request was sent (Attachment 193), and a response was sent by letter dated October 17, 1989 (Attachment 188). A second CERCLA § 104(e) information request

was sent on May 24, 1993 and was returned as "no forward order on file, unable to forward". (Attachment 194). A search for a new address was done and on June 8, 1993, EPA sent a CERCLA § 104(e) information request to Trimont c/o Pacific Anchor Chemical Company (Attachment 195). In a response dated June 17, 1993 from Air Products and Chemicals, Inc., the company indicated that they were not affiliated with the Trimont that EPA is concerned with and provided an address for Norman Beaucamp, an officer of Trimont (Attachment 196). On July 16, 1993, EPA sent a CERCLA 104(e) information request to Trimont c/o Norman Beaucamp (Attachment 197). The letter was "returned to sender-unclaimed" on August 6, 1993.

C. Potential Generators Not Recommended

EPA is in possession of information related to these parties, including responses to CERCLA § 104(e) information request and other documents. These documents are located in Region III and are available for review. (Companies who did not respond to a CERCLA § 104(e) request are marked with an asterisk.)

i. Parties who were only suppliers of materials sent to E-Z Chemical Company or only manufacturers of products that were sent to E-Z Chemical Company:

1.* Concord Chemical Co., Inc.
2. Phillips and Jacobs, Inc.
3. Seidel Oil Co.
4.* Dunlap, Mellor and Co. (Supplied to Globe)
5. Essex Industrial Chemicals, Inc.
6. J. T. Baker Co.
7. Evergreen Products
8.* O'Neill Industries (supplied to Kessler)
9. Sandoz Chemicals (supplied to ECA)
10. Sun Refining and Marketing Co.
11. Veckridge Chemical Co.
12. Pyramid Chemical Sales Co.

ii. Parties who were sent a CERCLA § 104(e) letter in May or June 1993 since they received materials from the Site during the removal action. No other materials were found on Site attributable to them and were found to have no other involvement:

1. American Freight Warehouse
2. Ashland Chemical Co.
3. Chemical Conservation of Georgia
4. Chicago Magnet Wire Co.
5. Cross Chemical Co.
6. Independent Chemical Co.
7. Industrial Solvents Chemical Co.
8. Michigan Recovery Systems

9.* Murd Company
10. Waste Research and Reclamation Co.
11. Clean Chem (purchased materials also)

iii. Parties who had a repackaging or storage agreement with E-Z Chemical Company for only non-hazardous materials:

1. Resource Materials Corporation
2. Freeman Chemical Co.
3. Larner International Corp.
4. Pariser Industries
5. Atochem, Inc. (Oxychem)
6. Stephen D. Round Co.
7. Puritan Products, Inc.

iv. Parties who had a repackaging or storage agreement with E-Z Chemical Company for hazardous materials but insufficient evidence exists linking materials found on Site to these companies (Although some of the substances listed below may have been found in the debris samples (Attachment 65), EPA does not recommend naming these companies because none of their products were found on the Site and the argument that spills likely occurred is made more tenuous).

1. Coverite - E-Z provided or packaged 4 products for Coverite but no materials belonging to it were found on Site during removal.

2. Mays Chemical, Co. - E-Z repackaged a virgin solution of sodium bisulfite, packaging it into 55 gallon drums from tank trucks but no materials were found on the Site which belonged to them.

3. Royale Pigments and Chemicals, Inc. - Royale sent and stored trichlorobenzene in drums on Site but no materials belonging to them were found on Site during removal.

4. Percon - Percon sold phenol and other non-hazardous material to E-Z, which were stored on Site. Although non-hazardous materials were found on Site belonging to Percon, phenol which could be attributed to it was not found.

5. Chemtech Industries, Inc - E-Z repackaged dry caustic soda into bags for shipment to a Chemtech customer and returned the bags to Chemtech. Chemtech claimed to have no product on the Site and none was found during removal. ('Caustic soda' is not a hazardous substance).

6. American Chemical Co.- American Chemical sent materials to the Site and 3 drums of unknown "Shell" products, which may or may not be attributable to American Chemical, were found on Site during removal. There is no evidence however to indicate that

American Chemical had a storage agreement with E-Z Chemical.

7. Coyne Chemical Co.- Sold materials to other companies and sent such materials to the Site for such companies. Drums belonging to it were found on Site but there was no evidence of a storage agreement between Coyne and E-Z Chemical.

8. Moroso Performance Products, Inc. - joint agreement with Kessler and E-Z for packaging of aniline product. Moroso provided specifications for the repackaging and the containers but Kessler owned the aniline product, thus Moroso did not own the work in progress under Aceto (supra).

v. Parties that only purchased materials from E-Z or purchased materials from other companies who stored them at E-Z Chemical:

1. Theodore Hooven Sons, Inc.
2. Hood Products
3. Alpha-Trol, Inc.
4. Ardex Laboratories
5. Automotive Chemical Co.
6. Cafeco Company
7. Eagle Bar Inc.
8. Guaranteed Brake Parts Co.
9. Harry Miller Corp.
10. MRD Corp.
11. Savage Industries, Inc.
12. Southwark Paint Co.
13. USG Corp.

vi. Parties who may have had some involvement with the Site but who are either out of business or cannot be located:

1. * Bucks Technology - sent non hazardous substances to E-Z for packaging. Sent 2 CERCLA § 104(e) information request to last known address and they were returned unclaimed. Sent the Postmaster an address confirmation form at last known address. The Postmaster indicated that Bucks Technology was no longer at this address and no forwarding address was known. Company's possible whereabouts were searched in Metronet and InfoAmerica information systems without success. (Metronet and InfoAmerica are computer data bases that contain address and corporate information on individuals and businesses; surname, address and business searches can be conducted on these data bases.) The President of Bucks, Kent J. Mescher, was also searched in data base files without success.

2. Sy Schwartz/S.N. Larc Industries - loaned a blender to E-Z in late 1980's. Responded to EPA's CERCLA § 104(e) letter in 1989 but a Metronet search and confirmation from the Post Office indicate he is no longer at last known address. Some possible leads exist as to his location.

3. * Ampco Company - a list of chemicals, possibly belonging to Ampco, was found in the files: potentially 571 five gallon cans. Material in cans is unknown. However, no Ampco product was found in drums on the Site. Post Office and Metronet confirm that company is not at most recently known address and no forwarding information was provided.

4. * Arkay Chemical - based on invoices known, company appears to have only purchased, not stored. No Arkay product was found on the Site. Post Office and Metronet confirm that the company is no longer in business at that address and no forwarding address was found.

5. * Budco - unclear what the relationship was with E-Z EPA has a folder on the company with the original CERCLA § 104(e) letter dated 8/4/89 which was unclaimed and marked "moved, not forwarded". Post Office had no forwarding address. A search of company in Metronet proved unsuccessful.

6. * Holly Chemical - unclear what the relationship was with E-Z. However, Holly was at least a supplier to other companies who did business with E-Z Chemical. EPA has a folder on the company with the original CERCLA § 104(e) letter dated 8/4/89 which was unclaimed and marked "moved, not forwarded". Post Office had no forwarding address. A search of company in Metronet proved unsuccessful.

7. * Intervisions-unclear what the relationship was with E-Z EPA has a folder on the company with the original CERCLA § 104(e) letter dated 8/4/89 which was unclaimed and marked "moved, not forwarded". Post Office had no forwarding address. A search of company in Metronet proved unsuccessful.

8. Chemical and Lighting Supply - unclear what the relationship was with E-Z EPA has a folder on the company with original CERCLA § 104(e) letter dated 8/4/89 which was unclaimed and marked "moved, not forwarded". Post Office had no forwarding address. A search of the company in Metronet proved unsuccessful.

9. * Earle Industries - it is unclear what the relationship was between Earle and E-Z EPA sent a CERCLA § 104(e) letter in August 1989, but it was never claimed and was returned. EPA determined thru the Post Office and thru Metronet that Earle is not operating at its present location and that its operating status is unknown.

10. * Gehing-Montgomery - it is unclear what the relationship was with E-Z. A CERCLA § 104(e) letter was sent by letter dated 8/4/89 but was returned unclaimed. It is believed that it is still in business.

vii. Parties who had CERCLA § 104(e) information requests sent to them by EPA but no evidence of involvement with E-Z was found:

1. Aqua Labs, Inc.
2. Atlas Steel Point Stilts
3. FBF Tool and Instrument Co.
4. Gary's Auto Body
5. General Electric
6. Hercules, Inc.
7 * Hugo, Inc.
8. IFF, Inc.
9. * Lavelle Aircraft
10. Pilling Co.
11. Rancocas Country Club
12. Sunshine Chemical Specialist, Inc.
13. Richmond Oil, Soap, and Chemical Co.
14. Dupont/ FMIS
15. Chemical Specifics
16.* Tyndale Chemical Co.
17 Perolin, Inc.

H. Miscellaneous PRP's

1. * Robinson Chemical - responded to a CERCLA § 104(e) information request in 1989 claiming that it had no involvement with E-Z. However, when E-Z was operating at 3230 North 3rd St., Essex Chemicals claims that it sold hydrofluoric acid to Robinson and Robinson asked that the material be sent to E-Z Chemical at the 3rd St. address. EPA sent another CERCLA § 104(e) letter to Robinson in May 1993 to clarify this situation and a response was received on July 22, 1993.

2. North Industrial Chemical - North Industrial Chemical did purchase materials from E-Z and 6 drums of hazardous hydrofluoric acid belonging to it were found on Site during the removal, which were removed by EPA. However, there is no evidence of a storage agreement with E-Z and no invoices show any of its material being sent to E-Z. Its CERCLA § 104(e) response claims that it only purchased and there was no storage arrangement with E-Z.

3. CMA Chemical Co. - purchased hazardous materials from E-Z and sold hazardous materials to E-Z. Additionally, it had hazardous materials on site during removal (believed to be purchased materials) and removed them but there was no evidence of a storage agreement (no invoices) between E-Z Chemical and CMA.

4. Elf Atochem North America Inc. (formerly Pennwalt Manufacturing Company) - On December 31, 1989, M&T Chemicals Inc. and Atochem, Inc. were merged into Pennwalt Manufacturing Company ("Pennwalt") and the survivor was named Atochem North America, Inc. Atochem North America Inc. then changed its name to Elf Atochem North America Inc. on January 1, 1992. Atochem Inc. had

a marketing and administrative services agreement with Oxychem Company Inc. ("Oxychem") (Attachment 198). For convenience, the discussion below is separated into the two main entities of concern, Pennwalt and Oxychem.

Pennwalt

Pennwalt had a relationship with E-Z Chemical from November 1982 (at its previous location) until November 1987. Pennwalt purchased various products from E-Z Chemical such as dimethyl aminoethanol, sequestrene AA, cadmium hypochlorite, muriatic acid, paint stripper, hydrogen peroxide and hydrofluoric acid. In addition, between 1984 and 1988, Pennwalt purchased muriatic and hydrochloric acid from E-Z Chemical, which was packaged in Pennwalt drums. The empty drums would then go back to E-Z for reselling. (Attachment 199 and 201). Pennwalt also arranged to have E-Z blend caustic soda with gluconic acid, which was then purchased by Pennwalt (Attachment 199). Pennwalt also purchased products from Freeman Chemical, which were stored at E-Z Chemical. Pennwalt supplied various products to Alchem (Attachment 198), who may have stored the products at E-Z Chemical. No record of a storage agreement has been found to exist between Pennwalt and E-Z Chemical.

At the time of the removal action, Pennwalt had a number of products on the Site, which it had sold to other companies including but not limited to: Pennwalt MSA, Dispatch, product CP5-17, diethylaminoethanol and fabric conditioner. There were also Freeman drums on Site, but they were determined not to be associated with Pennwalt (Attachment 198).

EPA Correspondence with Pennwalt

On July 24, 1989, EPA phoned Pennwalt to inform it of its products which were located on Site (Attachment 200). Paul Henry of Pennwalt visited the Site and had an interview with EPA (Attachment 201). On August 4, 1989, EPA sent Pennwalt a CERCLA § 104(e) information request, which was received on August 8, 1989 (Attachment 202). A response to the information request was sent on August 28, 1989 (Attachment 198). A follow-up CERCLA § 104(e) information request was sent to Atochem on May 24, 1993 and was received on May, 27, 1993 (Attachment 203). A response was received by letter dated on June 25, 1993 (Attachment 198).

Oxychem

Through a marketing and administrative services agreement with Atochem, Oxychem sent hydrogen peroxide to E-Z Chemical between July 1986 and February 1989. The material was sent in tanker wagons, for storage in Oxychem tanks at E-Z Chemical. E-Z would then dilute and repackage the hydrogen peroxide to specifications provided by Atochem and send the material to

ORIGINAL (Red)

Oxychem customers, one of which was Delmarva (Attachments 198 and 204). Oxychem removed their tanks from E-Z Chemical on March 7, 1989 (Attachment 198).

Two Oxychem drums of unknown content were found on Site at the time of EPA's removal action, although sampling was not performed (Attachment 63). These drums were not removed by Oxychem. Hydrogen peroxide is not a listed hazardous substance under 40 C.F.R. § 302.4, and therefore Oxychem is not recommended as a responsible party.

EPA Correspondence with Oxychem

On August 4, 1989, EPA sent Oxychem a CERCLA § 104(e) information request (Attachment 205). A response to the information request was sent on August 15, 1989 (Attachment 98). See above for additional correspondence.

IX. DECLARATORY RELIEF

In addition to the costs specified in Section V.D. of this Litigation Report, EPA seeks relief pursuant to CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), and 28 U.S.C. § 2201 for a declaratory judgment for further response costs to be incurred at the Site. EPA will expend additional government monies in enforcement costs related to this action.

X. ENFORCEMENT HISTORY: CONTACTS WITH RECOMMENDED DEFENDANTS

A. General Enforcement History

In 1989-1990, EPA's responsible party search involved sending CERCLA § 104(e) information requests to 82 companies and individuals. However, the companies/individuals that were identified at that time were believed to have used E-Z Chemical solely as a storage facility and were determined not to be responsible parties. (See Section XII.A.5.a. for anticipated defense). In fact, during the removal action, EPA allowed and arranged for approximately 24 companies/individuals to remove their useable products from the site (Attachment 1, Appendix B, April 19, 1990 Addendum Memo, see Enforcement Confidential memo, pg. 2 and Section V, tables). EPA provided notice of potential liability to E-Z Chemical and Edmund Zakrocki, Jr. orally on April 6, 1989 (Attachment 5, POLREP 1) and written by letter dated April 18, 1989, and to Mr. Goldfine by letter dated September 7, 1989 (Attachment 4, Sec. III, Nos. 10 and 13).

On January 12, 1990, EPA issued an Order to Mr. Zakrocki and E-Z Chemical Company for access purposes and to Mr. Goldfine for performance of a portion of the remaining removal action (Attachment 6). Specifically, EPA ordered Mr. Goldfine to hire a

contractor and arrange for the removal transportation and disposal of all bottles, containers, vessels or other receptacles containing hazardous substances, pollutants or contaminants which were located on the second floor of the building on the Site and scattered throughout ("laboratory chemicals"). EPA estimated that about 10,000 such containers of laboratory chemicals remained on Site (Attachment 6, Section VIII, Paragraph 8.2 and 8.5). Mr. Goldfine did not comply with the Order and EPA performed all remaining aspects of the removal action.

In May 1993, EPA continued the responsible party search. EPA sent out 54 CERCLA § 104(e) letters between May and July 1993. EPA intends to send a combined notice of liability, demand for costs and opportunity to settle and notice of (b) (4) involvement to the recommended defendants, see Section XIII.A.

B. Contacts with Recommended Defendants

EPA's contacts with the recommended defendants have been included in Section VII (above).

XI. COST RECOVERY

A summary of the documentation of costs of $3,293,583.83 incurred with respect to the Site through November 10, 1992, is attached hereto as Attachment 206. The documentation supporting that summary is available for DOJ review at EPA and can be obtained by contacting Ms. Leslie Vassallo at (215) 597-3171.

XII. OTHER LEGAL ISSUES

A. Potential Defensive Arguments

1. Statute of Limitations

Some or all of the recommended defendants may attempt to argue that the statute of limitations for the removal action at the Site was May 31, 1993; (or June 6, 1993) see Section III.A. The United States should be able to easily overcome this argument because the POLREPS demonstrate that final disposal of all materials did not occur until September 28, 1990. Although there was limited activity at the Site between May 31, 1990 and September 28, 1990, the emergency removal action was not complete until EPA disposed of all remaining materials and termed the action complete. That did not occur until September 28, 1990. In addition, in POLREP #264 of August 24, 1990 (Attachment 5) OSC Matlock references "regular visits to the Site"; presumably since May 31, 1990. OSC Matlock may need to be interviewed on this matter.

In United States v. Rohm & Haas, No. 90-7468, slip. op. (E.D. PA 1992) the Court ruled that removal is not confined to

on-site removal and that 'complete removal' had not occurred so long as EPA was monitoring, assessing, and evaluating the release and threatened release of hazardous substances at the Site. In United States v. Allen, No. 90-2093, slip. op. (W.D. Ark 1990), the Court, in finding that EPA's suit was timely filed noted that:

> Clearly, the term removal is not limited to on-site activity and includes the time needed to dispose of the removed material...

The Court goes on to note that the defendants had not alleged that EPA unnecessarily delayed the disposal of the material and finds the action timely filed.

Thus, the recommended defendants could argue that EPA unnecessarily delayed the disposal of the material. Although POLREPS #264 and 265 (Attachment 5) reflect EPA's on-going efforts to find disposal locations for remaining materials, additional details on such efforts can be obtained by interviewing OSCs Matlock and English, and perhaps members of the Weston TAT. Should some or all of the recommended defendants raise this argument, the United States should be in a position to refute it.

2. Costs Incurred were Inconsistent with the NCP

OSC Matlock in POLREP #265, dated September 7, 1990, (Attachment 5) expresses displeasure with EPA's contractors because disposal of all remaining wastes had been arranged for said day and EPA was not informed until it arrived on Site accompanied by 2 TAT members and five ERCS employees that some of the waste could not be disposed of on that day.

OSC Matlock reports:

> At this time, the ERCS Response Manager informed the OSC that the waste profiles and acceptance for the sludge and paint waste drums was incomplete. Therefore, the 0700 hour scheduled truck was cancelled the previous day. By arriving at 0700 hours, ERCS assumed site work would continue as scheduled without consulting the OSC. The OSC was extremely displeased that he was not notified of the changed scope of work. Since ERCS knew that only two drums of cyanide waste and the one glass jar of uranyl nitrate was still scheduled for offsite disposal at 1100 hours, the OSC feels that the mobe and demobe of all unnecessary equipment and personnel and subsequent costs should not be incurred by the EPA. ERCS should not dictate how much personnel and equipment they feel necessary

without consulting the OSC.

OSC Matlock goes on the note that he "expressed his concerns to EPA Regional Management (Crystal) and to EPA DPO (Fetzer). Guardian management personnel were notified the OSC's concern for unnecessary equipment and man power."

Although EPA's Cost Specialist, Leslie Vassallo, is presently looking into what actions were taken by EPA at the time of the OSC's complaint, some or all of the recommended defendants are likely to raise such costs as inconsistent with the NCP. EPA will inform DOJ of the results of Cost Specialist Vassallo's investigation.

3. No recovery for costs incurred on July 18, 1990

Some or all of the recommended defendants may argue that EPA should not be able to recover the costs incurred on July 18, 1990 in responding to the spill caused by vandals which released non-hazardous materials into the street (Attachments 21 and 22). See Section V.C. above. Their argument could be two-fold: (1) the release was caused by vandals at a time EPA was conducting a removal action at the Site. EPA had control over the Site not any of the recommended defendants; and (2) Only non-hazardous materials were released, thus EPA cannot seek to recover those costs because CERCLA and the NCP allow for the recovery of costs only expended to address a release of 'hazardous substances'. EPA's Cost Specialist Leslie Vassallo is attempting to segregate the costs expended by EPA on that day for this spill. The costs are likely to be fairly minimal; it is possible they were not even billed to the Site with the site specific account number.

4. Section 107(b)(3) defense

Some or all of the recommended defendants may attempt to argue that they have a defense under § 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

a. None of the recommended owner/operators will be able to successfully assert the Section 107(b)(3) defense because they were all involved in a "contractual relationship" with one another, thus ensuring the unavailability of the defense.

In LeCarreaux, slip. op (D.N.J. July 30, 1991), the court found the owner of the Site who leased the Site to the operator could not prove that the release was caused solely by unrelated third persons, and that due care reasonable precautions (see Section 101(35) of CERCLA, 42 U.S. C. § 9601(35)) had been taken. In U.S. v. Northernaire (supra), 670 F. Supp. at 748, the court found the owner-lessor of the facility and the operator-lessee unable to avail themselves of the Section 107(b)(3) defense in light of the contractual relationship. See also U.S.

v. Bliss (supra), 667 F. Supp. at 1304-05 n. 3, the defense should be unavailable to a person who willfully ignored how a third party would dispose of a hazardous substance; and U.S. v. Tyson (supra), 25 Env't Rep't. Cas. at 1906-09, a current corporate owner of a facility [such as E-Z Chemical] that actively participated in the facility's management and failed to prevent dumping from occurring there can not assert the third party defense.

b. The defense will also be unavailable to the generators because they deposited hazardous substances at a facility. See Louisiana-Pacific v. Asarco, 735 F. Supp at 363.

5. Generators' Arguments

a. Some or all of the recommended generators will argue that they signed voluntary compliance agreements with EPA during the conduct of the removal action and, in fact, removed what they had been led to believe by EPA at the time were all the drums EPA could identify with its company's label. (The EPA also determined in several Enforcement Confidential Memos accompanying the funding requests that the potential generators were not responsible parties because they had used E-Z solely as a storage facility. Although such documents are likely non-discoverable under the deliberative process privilege, should EPA's decision in 1989 on their potential liability be raised, the United States will need to distinguish the additional investigation and analysis that has occurred since that time. In fact, EPA's investigation has revealed that the relationships were more complex than merely determining the existence of a storage agreement; i.e., some of the parties did not deal with E-Z, some had more than a storage agreement, etc. In addition, after conducting an in-depth analysis, EPA has now concluded that the arrangements for 'storage', 'blending', 'drumming', 'packaging', and/or 'diluting' constituted an "arrangement for disposal" under CERCLA.

The United States' response to generators' argument is that the EPA had no legal or regulatory obligation to allow them to remove their drums from the property. EPA's first obligation under Section 104 of CERCLA and Section 300.415 of the NCP was to address the severe threat of fire and explosion presented by the Site; it could not stop disposal operations in order to accommodate parties. In addition, lack of space for staging drums was a major problem at the Site (Attachment 1). The United States will also be able to demonstrate, for some of the parties, and through use of photographs, that their drums disposed of by EPA were in a deteriorated condition, rusted, possibly leaking, etc. Thus, the United States' argument is that the drums disposed of by EPA were deteriorated and that the contents could no longer be considered product sent for storage, especially since they had likely been abandoned and the arrangement no longer constituted

an arrangement for storage but for disposal or treatment (See Section VII. B 'Theory of Liability'). However, OSCs Thomas and English will need to be interviewed because the OSC Report indicates EPA removed and disposed of 'drums of product' or 'empty' drums (Attachment 1).

b. Some or all of the recommended generator defendants may argue that if they are liable, the harm at the Site is divisible and the damages are capable of reasonable apportionment, and they should be held liable only for the harm and costs expended to address the drums or waste they contributed to the Site. See discussion in Leonard Goldfine section, below. Because of the threat of fire and explosion at the Site and, as in O'Neill v. Picillo 883 F.2d 176 (1st Cir. 1989), the United States would argue that it is simply impossible to determine the amount of environmental harm caused by each party at the Site. As in Picillo, the United States should argue that the drums identified for each defendant were all that could be positively identified as attributable to the defendant. In Picillo, the absence of legible markings in the barrels, and a fire at the Site (the Court found), had rendered the harm at the Site indivisible among the defendants. In our case, Zakrocki's practice of repackaging drum contents indiscriminately among customers, likely 'skimming' practices, sloppy housekeeping and the leaking and overturned drums in the large storage tank that was flooded, should provide a basis for the Court to find that there is no basis for divisibility. However, the United States will need to argue the facts carefully showing the indivisibility of the harm at E-Z because, unlike in Picillo, there was no fire at the Site. This may provide a stronger argument of divisibility for the E-Z defendants because they may assert that once their drums were removed, they ceased contributing to the harm presented by the Site and should thus pay only for the costs of removing their drums. See also, United States v. Medley 25 Env. Rep. Cas. (BNA) 1315 (D.S.C. Nov. 5, 1986) (thousands of corroded, leaking drums commingled to create single, indivisible harm). Although in United States v. South Carolina Recycling and Disposal, Inc., 653 F. Supp 984 (D.S.C. 1984) there was leaking from drums into the ground (a fact which EPA cannot support in the E-Z situation), there was storage at E-Z of drums stacked dangerously high of an incompatible nature presenting a threat of fire and explosion. As described above, there were also leaking, corroded and overturned drums in the large storage tank that was flooded. In describing the Bluff Road site and its operation in United States v. South Carolina Recycling the Court states that "... an environmental hazard of staggering proportions developed. Some 7,200 fifty-five gallon drums of hazardous substances, including materials which are toxic, carcinogenic, mutagenic, explosive, and highly flammable, accumulated at the site. The drums were randomly and haphazardly stacked upon one another without regard to their source or the compatibility of the substances within. Many drums deteriorated to the point that their hazardous

substances were leaking and oozing onto the ground and onto other drums." The Court finds the harm at the Bluff Road Site was indivisible because of the deleterious condition of the Site at the time of cleanup and that all of the substances at the Site contributed synergistically to the threatening condition. The United States will be able to successfully rebut the argument of divisibility (on which the defendants' bear the burden of proof, see Picillo, South Carolina Recycling) by describing the dangerous condition of the site at the time of cleanup. The courts have held that a divisibility of harm determination will be determined on the specific facts presented, See United States v. Alcan (Alcan-Butler) 964 F. 2d 252 (3d Cir. 1992) (remarking on "intensely factual nature of the divisibility issue".)

In raising this defense, the recommended generator defendants may confuse the divisibility of environmental harm argument with allocation of costs based on removing their particular drums from the Site. The divisibility or apportionment of harm defense is based on the environmental conditions at a site; it is not based on the amounts of money spent on various response activities. In fact, the amount of money spent on a particular activity is irrelevant to divisibility of harm. The Court in United States v. Western Processing Co., Inc. 734 F. Supp 930 (W.D. Wash. 1990) considered and rejected defendants argument that CERCLA liability could be apportioned on the basis of particular costs incurred, rather than on the basis of environmental harm. The Court cites United States v. Stringfellow, 661 F. Supp 1053, 1060 (C.D. Co. 1989) in making the distinction:

> There are two distinct contexts in which the issue of "apportionment" arises. It is critical that these two different contexts are not confused. In the first context, the question is whether the harm resulting from two or more causes is indivisible, or whether the harm is capable of division or apportionment among separate causes. If there is a single harm that is theoretically or practically indivisible, each defendant is jointly and severally liable for the entire injury. However, if there are distinct harms that are capable of division, then liability should be apportioned according to the contribution of each defendant.
>
> The second context in which the issue of "apportionment" arises occures after the first inquiry regarding the indivisibility of the harm. If the defendants are found to be jointly and severally liable, any defendant may seek to limit the amount of damages it would ultimately have to pay by seeking an order of contribution apportioning the damages among the defendants.

Western Processing at 938.

The distinction was also addressed by the Court in United States v. South Carolina Recycling and Disposal, Inc., (SCRDI) 653 F. Supp. 984, 995 (D.S.C. 1984). In rejecting generator defendants' argument that apportionment of costs of cleanup should be done by calculating relative volumetric contributions from shipping documents, and that the harm was therefore divisible, the Court cites United States v. Chem-Dyne, 572 F. Supp. 802, 811 (S.D. Ohio 1983): "... the volume of waste of a particular generator is not an accurate predictor of the risk associated with the waste because the toxicity or migratory potential of a particular hazardous substance generally carries independently of the volume". The SCRDI Court concludes that the harm at the site is indivisible and defendants are thus jointly and severally liable for costs incurred. The Court states: "Such arbitrary or theoretical means of cost apportionment do not diminish the indivisibility of the underlying harm, and are matters more appropriately considered in as action for contribution between responsible parties after plaintiff has been whole". SCRDI, pg 995.

The divisibility or apportionment of harm defense challenges joint and several liability itself based on the divisibility of the environmental harm. Western Processing at 938. The relevant inquiry focuses on evidence relating to factors which affect environmental harm such as: proof of relative toxicity, migratory potential, degree of migration, and synergistic capacities of the hazardous substances at the Site. United States v. Alcan, (Alcan-New York), Civ. Nos. 92-6158, 92-6160 (2d Cir. April 6, 1993), slip op. at 18; Western Processing at 938.

It is also worth noting that neither the 2nd Circuit's Alcan decision (Alcan-New York) nor the 3rd Circuit's Alcan decision (Alcan-Butler) change the standard of joint and several liability nor the principles of divisibility of harm used since United States v. Chem-Dyne, 572 F. Supp. 802 (S.D. Ohio 1983).

Both the 2nd and 3rd Circuits, in the Alcan cases, remanded the cases to the district courts for a hearing on whether the harm was divisible and the damages capable of reasonable apportionment. Neither court changed the substance of the divisibility argument, only a procedural aspect, that being the timing: when to raise a divisibility argument. Under the Alcan decisions, defendants may be able to raise a divisibility defense at the liability phase rather than at the cost phase. See April 21, 1993 memorandum entitled "Framework for Analysis of Divisibility of Environmental Harm in CERCLA Cases and Summary of Reported Cases" by David M. Moore, OE (Attachment 207).

c. Kessler Chemical Company may argue that the theory of CERCLA liability outlined in Aceto is limited to the manufacture

of pesticides. Support for this position is arguably contained in the Federal District Court Aceto decision wherein the Court states: "Because the pesticide industry is structured in a unique manner, the liability of pesticide manufacturers must be considered separately." U.S. v. Aceto Agr. Chemicals Corp., 699 F. Supp. 1384 at 1387 (S.D. Iowa 1988). Nonetheless, an attempt to restrict Aceto to the pesticide industry is without merit.

The District Court considered the pesticide industry as uniquely situated because of the common practice of pesticide manufacturers to hire companies to formulate and package commercial grade pesticides for them under the conditions outlined in Aceto. Id. However, the Court did not address the possibility that such practices might be common to other industries or even other companies. Because Kessler (and much of the chemical manufacturing industry) routinely enters into chemical formulation agreements similar to those in Aceto, Kessler should be subject to the Aceto test of CERCLA liability; while the Eight Circuit cites the assertion in the government's complaint that the pesticide industry frequently enters into such formulation agreements, the Courts does not state this arrangement is unique in any way. In addition, support for extending the Aceto theory can be found in the 9th Circuit's opinion in Jones-Hamilton (supra).

6. Leonard Goldfine Arguments

a. Mr. Goldfine is likely to argue that he is not a liable party under CERCLA (See U.S response in Section VII B.1) but that if he is liable, he is liable and responsible only for the costs associated with the costs of disposing of the laboratory containers. He would argue that the EPA made that determination in the Order and that apportionment is thus appropriate because he was ordered only to address the disposal of the laboratory containers in the Order and EPA had clearly already determined that the harm at the Site is divisible. The United States response to this argument is that EPA's determination in the Order was based on the information known to it at the time. The United States possesses additional information at this point in time and has concluded Mr. Goldfine is liable for all costs associated with the removal action. In addition, and more importantly, in this CERCLA Section 107 action, Mr. Goldfine will be unable to prove the divisibility defense because the environmental harm that can be attributed to him is not severable from other environmental harm at the Site, and thus, there is no reasonable basis for apportionment. See U.S. v. Monsanto, 858 F. 2d 160, 171 (4th Cir. 1988) cert. denied 490 U.S. 1106 (1989); O'Neill v. Picillo, 883 F. 2d 176 (1st Cir. 1989); U.S. v.Mottolo, Civ. No. 83-547-D (D.N.H. Dec. 17, 1992); Weyer Laeuser Co. v. Koppers Co., 771 F. Supp. 1420 (D. Md. 1991). See April 21, 1993 memorandum entitled "Framework for Analysis of Divisibility of Environmental Harm in CERCLA Cases and Summary of

Reported Cases" by David M. Moore, OE (Attachment 207).

b. By letter dated January 17, 1990 (Attachment 23), Mr. Goldfine's counsel argues that neither Mr. Goldfine, nor the Laurel Street Corporation, nor 950 Laurel Street Corporation have ever had any involvement in or authority with respect to the management of Packaging Terminals or E-Z Chemical. He argues that the fact that he was aware of the general nature of the business does not make him an owner/operator. He notes that the leases (with Packaging and E-Z) required that the lessees business' be conducted in accordance with the law. EPA disagrees with such conclusions, as set forth in Section VII.B.1 above. Mr. Goldfine's counsel also argues, by letter dated September 15, 1989 (Attachment 4, Sec. III No. 13) that his client is not an owner/operator by virtue of holding the two mortgages to the property comprising the Site. As set forth in Section VII B.1. 'Theory of Liability', EPA does not believe this theory of liability should be advanced unless additional information is developed during discovery on Mr. Goldfine's management of the companies' after March 1987.

XIII. LITIGATION/SETTLEMENT STRATEGY

A. Settlement Negotiations, Including Compliance with Executive Order 12778

EPA provided notice of potential liability and opportunity to finance or perform removal actions at the site to E-Z Chemical Company and Mr. Edmund Zakrocki in April and May 1989 (Attachments 4, Sec. III, Nos. 10 and 13 and 5 (POLREP 1)). On September 7, 1989, EPA notified Mr. Goldfine of his potential liability and offered him the opportunity to negotiate with the Agency concerning the proper disposal of the remaining chemicals at the Site. Mr. Goldfine was given seven days after receipt of the notice letter to contact EPA in order to negotiate. Mr. Goldfine did not contact EPA and upon issuance of the Order, failed to comply with the Order (Attachments 6 and 23).

EPA requests that DOJ send a letter to all recommended defendants, discussing notice of potential liability (unless previously noticed), demand for payment of costs and opportunity to settle and explanation of Robert Caron involvement at the Site in a time frame consistent with the statute of limitations, and to the extent required by Section I.D of the April 8, 1993 OE Guidance on Section 1 of Civil Justice Reform Executive Order No. 12778. Although EPA Region III recognizes that in the Guidance noted above OE recommends that Regional Counsel provide notice and attempt to settle liability before the case is referred to DOJ (Section I.D.1), it is impracticable to do so here because of the upcoming statute of limitations. EPA believes that such letter and any ensuing negotiations will satisfy the pre-

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complaint settlement negotiation requirements of Executive Order No. 12778.

EPA recommends that the United States seek to recover 100% of its response costs and that penalties in the amount of $695,000 and treble damages in the amount of approximately $750,000 be sought from Mr. Goldfine. EPA Region III recommends accepting $173,750 in penalties but full treble damages from Mr. Goldfine should there be an attempt to settle on his behalf.

B. Litigation Strategy

1. Discovery

In proceeding with the proposed litigation, some additional discovery on some of the recommended defendants will be necessary in order to supplement the prima facie case outlined against the recommended defendants.

2. Summary Judgment

EPA recommends filing a motion for summary judgment against the recommended defendants after additional information is gathered through discovery.

The Guidance on Executive Order 12778 noted above indicates (Section VII) that to the extent possible, litigation reports should include (1) information on relevant and material facts unlikely to be disputed and for which fact stipulations would be appropriate and, (2) a list of issues the Agency attorneys believe the United States could win in summary judgment.

EPA believes that the following elements of the case are one unlikely to be disputed and are one the United States could win summary judgment:

a. Section 107 of CERCLA:
   - a release or threat of release of hazardous substances into the environment;
   - from a facility;
   - which cause the United States to incur response costs (See Section VI.A)

b. Section 106(a) Order issued properly:
   - that there may be an imminent and substantial endangerment to the public health or welfare or the environment;
   - because of a release or threat of a release;

- of a hazardous substance;

- from a facility;
  (See Section VI.B above)

c. Section 106(b) of CERCLA:

- any person;

- an order of the President issued under Section 106(a) of CERCLA

d. Section 107(c)(3) of CERCLA:

- [a liable party] failed to properly provide removal action upon order of the President pursuant to Section 106

- (See Section XIII B.1 above)

XIV. WITNESSES/ATTACHED EVIDENTIARY DOCUMENTS

A. Potential Witnesses

1. Kevin Koob (3HW32)
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-9355

OSC Koob recorded the "Incident Notification Report" (Attachment 2) on April 4, 1989 and also represented EPA (along with OSC Heston) in the joint inspection conducted by EPA and the City of Philadelphia's Managing Director's Office, Fire Marshal's Office, Fire Department, Department of Licenses and the Inspections and Solicitor's Office on April 5, 1989. Mr. Koob can testify as to his findings regarding Site conditions, as reflected in his memo (Attachment 3).

2. Gerald Heston (3HW32)
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-9355

OSC Heston accompanied OSC Koob on the April 5, 1989 inspection and participated in EPA's initial discussions on the scope of work for the Site, after participating in the April 6, 1989 inspection of the Site (Attachment 5 (POLREP 1)). He remained involved with the Site through April 21, 1989 (Attachment 5, (POLREPS (2 through 15)). He also authored the April 7, 1989 "Special Bulletin A" (Attachment 1, Appendix B)

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requesting the Regional Administrator to activate the Superfund and co-authored the April 19, 1989 Additional Funding Request (Attachment 1, Appendix B). Mr. Heston can testify as to Site conditions requiring emergency action, as reflected in such documents.

3. George W. English (3HW31)
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-8250

OSC English participated in EPA's initial discussions on the scope of work for the Site, after participating in the April 6, 1989 inspection of the Site (Attachment 5, (POLREP #1)). He was involved with the Site through the completion of the action (Attachment 5). He authored the On-Scene Coordinator's Report (Attachment 1). Other than the April 7, 1989 "Special Bulletin A" (Attachment 1, Appendix B) he authored or co-authored the subsequent funding requests (Attachment 1, Appendix B). Mr. English can testify most comprehensively to EPA's emergency action at the Site and its consistency with the NCP.

4. Dennis Matlock (3HW31)
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-8170

OSC Matlock visited the Site on three occasions (Attachment 5 (POLREPS, 264, 265, 266)), and assisted in the final disposition of 19 drums and one laboratory packed container. On August 24, 1990 (POLREP 264) and on September 7, 1990 (POLREP 265) he was not accompanied by OSC English (as he was on September 28, 1990 (POLREP 265)) when final disposition of such materials occurred. However, unlike Mr. English, he can testify as to his concerns over the costs incurred under the ERCS contract on September 7, 1990 (POLREP 265) as reflected in such POLREP.

5. John ("Jack") Owens (3HW31)
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-8250

OSC Owens responded to the spill behind the E-Z Chemical Site on July 18, 1990 (Attachments 21 and 22). OSC Owens can testify as to the actions taken on that day by EPA to address the spill.

6. Leslie Vassallo (3HW12)

United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-3171

Ms. Vassallo prepared the cost summary (Attachment 206) reflecting the costs incurred by EPA at the Site. She can testify as to the preparation of such report and all back-up documentation.

7. Nanci Sinclair
19 Christopher Road
Voorhees, N.J. 08043 (home address)
(609) 424-0922 (home number)

Ms. Sinclair was the Community Relations Specialist assigned to the Site from EPA's Office of Public Affairs. She provided assistance regarding community concerns and drafted press releases for the EPA. She can testify as to EPA's community relations efforts. She is no longer with EPA.

8. Christopher P. Thomas
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-4458

Mr. Thomas was the Enforcement OSC assigned to the Site. He conducted the initial PRP search, sent out the initial 82 CERCLA § 104(e) requests for information letters, prepared both the Administrative Record file in support of the removal actions, as well as the one in support of the Order (Attachments 4 and 18) and assisted in the issuance of the Order (Attachment 6). Mr. Thomas also coordinated the removal of drums of product from the Site with manufacturers/owners during the conduct of the removal action (Attachment 1, Appendix B, see "Confidential Enforcement Status" memos). Mr. Thomas can testify regarding all activities described above.

9. Jerome Curtin (3HW12) (215) 597-8218
Michelle Rogow (3HW12) (215) 597-9362
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

Mr. Curtin and Ms. Rogow conducted the subsequent PRP search initiated in May 1993 and can testify regarding such activities.

10. CPO Buddy Mansfield
(Current location being investigated)

CPO Charles Wyatt

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U.S. Coast Guard
National Strike Force
1461 U.S. Highway 17 North
Elizabeth City, N.C. 27909
(919) 331-6034

CPOs Mansfield and Wyatt acted as Site Safety Officers for a major portion of the time the removal action was conducted. They can testify as to safety operations at the Site during such time.

11. George M. Danyliw
Southeast Regional Office
Bureau of Waste Management
Commonwealth of Pennsylvania Department of Environmental Resources
Lee Park
Suite 6010
555 North Lane
Conshohocken, PA 19428
(215) 832-6212

Mr. Danyliw represented the Commonwealth and coordinated state efforts with EPA in addition to assisting with cleanup monitoring at the Site.

12. Gerald Janda, Chief
City of Philadelphia Fire Department
c/o Fire Administration Building
240 Spring Garden
Philadelphia, PA 19123
Atten: Fire Marshall's Office
(215) 592-4888

Mr. Janda contacted EPA on April 4, 1989 and requested that EPA inspect the Site (Attachment 2) because of the potential threat of fire and explosion presented by the Site. The impact on the surrounding population and major transportation arteries was cited as of concern (Attachment 3). Mr. Janda helped coordinate local authority activities at the Site. Mr. Janda can testify as to the threat presented by the Site.

13. Nathaniel Carr, Captain
City of Philadelphia
Fire Marshal's Office
c/o Fire Administration Building
240 Spring Garden Street
Philadelphia, PA 19123
(215) 592-6067

Mr. Carr may be able to testify as to City of Philadelphia code violations issued. (See Attachment 1, "Roster of Agencies, Organizations and Individuals").

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14. Barry R. Lebowitz
City of Philadelphia
Department of Licenses and Inspections
Cigna Building
1600 Arch Street
Philadelphia, PA 19103
(215) 592-6073

(in 1989)
Flora Barth Wolf
Divisional Deputy City Solicitor
City of Philadelphia
Law Department
1101 Market Street, 10th Fl.
Philadelphia, PA 19107-2997

Presently:
Judge Flora Barth Wolf
Court of Common Pleas
205 One East Penn Square
Philadelphia, PA 19103
(21)686-2210

Inspector Lebowitz, on behalf of the City of Philadelphia issued the Cease, Desist and Evacuate Order to E-Z Chemical Corporation on April 5, 1989 (Attachment 4, Sec. I. No. 1). Mr. Lebowitz can testify as to Site conditions that led to issuance of such order and to some of the earlier orders issued by the City for the site property (See Section V.B. above). Ms. Barth Wolf was counsel for the City of Philadelphia and was in contact with counsel for E-Z Chemical Company at the time of the Cease, Desist and Evacuate Order issued by the Department of Licenses and Inspections on April 5, 1989 (Attachment A.R. Vol I, No. 8). (Note: Judge Barth Wolf's cases at the City Solicitor's Office, including E-Z's, are presently being handled by Curley Cole, (215) 592-5227).

15. (b) (4) (3HW33)
United States Environmental Protection Agency, Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107
(215) 597-4458

Although (b) (4) is now an OSC with EPA, she was a member of the Roy F. Weston, Inc. Technical Assistance Team (TAT) who assisted the OSCs with all technical aspects or site activities, contractor monitoring, site safety, and removal of product from the Site.

16. (b) (4)
Response Manager
Guardian Environmental Services, Inc.
1280 Porter Road
Bear, DE 19701
(304) 834-1000

Guardian Environmental Services provided a mobile lab unit and thus on-site analysis of samples. Guardian also provided

personnel and equipment to perform other cleanup activities, including transport and disposal of hazardous materials. As the Guardian Response Manager, Mr. Taylor can testify as to Guardian's role at the Site, specifically, with sampling and analysis events.

The following potential witnesses were identified through a review of OSHA's files (Attachment 17); EPA has not yet attempted to locate the individuals but will be attempting to do so in August. They are all thought to be past E-Z Chemical or Packaging Terminal employees.

17. (b) (6) [redacted]

E-Z employee in October 1986.

18. (b) (6) [redacted]

E-Z employee in October 1986.

19. (b) (6) [redacted]

E-Z employee.

20. (b) (6) [redacted]

E-Z Employee in October 1986

21. (b) (6) [redacted]

E-Z employee in 1987 or 1988.

22. (b) (6) [redacted]

E-Z employees in 1987 or 1988.

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23. (b) (6)
address unknown

She signed for an OSHA letter for E-Z on 10/8/87.

24. Bernard Markocki
(b) (6)

E-Z employee in 1987.

25. (b) (6)

Manager at Packaging Terminals in 1984/85.

26. (b) (6)

Employee of Packaging Terminals in 1984/85; also an employee of E-Z

27. (b) (6)

E-Z employee.

28. (b) (6)

E-Z employee.

29. (b) (6)

Employee of Packaging Terminals in 1984/85.

30. (b) (6)

Foreman of Packaging Terminals in 1984/85.

31. (b) (6)

Signed a receipt for an OSHA notice to Packaging Terminals on August 1, 1985.

B. Attached Evidentiary Documents

1. Federal On-Scene Coordinator's Report for E-Z Chemical Site.

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2. Region III Incident Notification Report (April 4, 1989).

3. Memo from F.K. Koob to Charlie Kleeman, (April 5, 1989).

4. Administrative Record file, Volume I.

5. Pollution Reports (Nos. 1 through 266).

6. Administrative Order Docket No. III-90-07-DC (cover letters to L. Goldfine, E. Zakrocki and Airborne Express receipt included).

7. Deed to Parcel "B".

8. Deed to Parcel "C".

9. City of Philadelphia Department of Licenses and Inspections violation notices.

10. Page from Booz, Allen & Hamilton report on (b) (4) involvement.

11. Fifty documents identified in Site file with (b) (4) name.

12. Two Chain of custody forms.

13. United States v. LeCarreaux, July 31, 1991 slip. op. (D.N.J.).

14. United States v. LeCarreaux, January 29, 1992 slip. op. (D.N.J.) and related orders.

15. [Draft] "Interim Guidance on Enforcement of CERCLA Section 106(a) Administrative Orders through Section 107(c)(3) Treble Damages and Section 106(b)(1) Penalty Actions.

16. Preliminary Assessment Form, letter dated December 22, 1989.

17. OSHA files.

18. Administrative Record file, Volume II (in support of Order, No. 6 above).

19. Hazardous Waste Manifests.

20. City of Philadelphia Fire Department records.

21. Region III Incident Notification Report, (July 18, 1990).

22. Pollution Report No. 1 and FINAL (July 18, 1990).

23. Letter from Kermit Rader, Esq. (counsel for L. Goldfine) to Christopher Thomas (EPA) dated January 17, 1990.

24. Memorandum to file from Dean Jerrehian dated January 30, 1990.

24A. [DRAFT] Memorandum dated August 18, 1993 from Leo Mullin on 'Ability to Pay of Leonard Goldfine.'

25. Delegation 14-14-B, Administrative Actions through Unilateral Orders.

26. [Draft] "Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Treble Damages Claims for Violations of Administrative Orders" (November 18, 1991).

27. Handwritten notes of Louis Spinelli (E-Z Chemical).

28. Articles of Incorporation (E-Z Chemical Company).

29. Dun & Bradstreet report on E-Z Chemical Company.

30. CERCLA § 104(e) letter to Mr. Edmund L. Zakrocki, Jr.

31. [unsigned] Settlement Agreement of December 1985 between Packaging Terminals, Inc. and Klehr, Harrison, Harvey, Branzburg, Ellers & Weir.

32. Dun & Bradstreet report on Packaging Terminals, Inc.

33. Response to CERCLA § 104(e) letter (L. Goldfine), June 29, 1993.

34. Handwritten notes of Louis Spinelli (950 Canal Street Corporation and Laurel Street Corporation).

35. Articles of Incorporation (950 Canal Street Corporation).

36. Dun & Bradstreet report on 950 Canal Street Corporation.

37. Articles of Incorporation (Laurel Street Corporation).

38. Dun & Bradstreet report on Laurel Street Corporation.

39. Property transfers of L. Goldfine.

40. Memorandum on Owner/Operator liability by J. Curtin.

41. CERCLA § 104(e) letter to Mr. Leonard Goldfine (June 1993).

42. Sublease Agreement of February 1, 1982 between Pioneer Salt

and Chemical Company, Inc. and Fill-Pac, Inc.

43. Letter from Mathew S. Biron, Esq. to City of Philadelphia dated March 9, 1987.

44. Manifest of March 30, 1987.

45. Notification of Hazardous Waste Activity.

46. Amended Complaint in Phipps Products Corporation vs. Packaging Terminals, Inc. and E-Z Chemical Co., Civ. Ac. No. 3015, Philadelphia County Court of Common Pleas and attachment (March 19, 1985 agreement).

47. Records of Phonecons, 7/15/93 from J. Curtin.

48. Handwritten notes of Louis Spinelli (Packaging Terminals, Inc.).

49. Articles of Incorporation (Packaging Terminals, Inc.).

50. CERCLA § 104(e) letter to Mr. Francis Seklecki (June 1993).

51. Memorandum on ownership by Jerry Curtin.

52. E-Z Chemical Company, Inc. Unanimous Action Resolutions, March 17, 1987.

53. Handwritten Notes of Louis D. Spinelli (Alchem Products, Inc.)

54. Dun and Bradstreet report on Alchem Products, Inc. dated July 12, 1993.

55. EPA Ability to Pay estimates, contains confidential business information.

56. Alchem product list with the date of delivery to E-Z Chemical (Feb. 1986-April 1989).

57. Receipts, Transactions and Invoices between Alchem Products, Inc. and E-Z Chemical.

58. Alchem Products, Inc. list of suppliers.

59. CERCLA § 104(e) response from Pennwalt dated August 28, 1989.

60. CERCLA § 104(e) response from Alchem Products, Inc. dated June 15, 1993.

61. Alchem Products, Inc. sales invoices.

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62. Alchem Products, Inc. bills of lading for products removed from E-Z Chemical Site (June 1989-Dec. 1989).

63. EPA E-Z Chemical Drum Log dated September 6, 1990.

64. E-Z Chemical Site Guardian Environmental Services Mobile Laboratory Compatibility Testing dated October 11, 1989.

65. Analytical Sampling Results from AnalytiKEM and Princeton Testing Laboratories.

66. Letter from Alchem Products, Inc. to EPA dated May 4, 1989.

67. Alchem Products, Inc. Voluntary Compliance Agreement dated May 16, 1989.

68. CERCLA § 104(e) information request to Alchem Products, Inc. dated August 4, 1989.

69. CERCLA § 104(e) response from Alchem Products, Inc. from EPA dated August 6, 1989.

70. Letter to Alchem Products, Inc. from EPA dated November 6, 1989.

71. CERCLA § 104(e) information request to Alchem Products, Inc. dated May 24, 1993.

72. Dun and Bradstreet report on Arrow Chemical Company dated May 26, 1993.

73. Receipts, Transactions and Invoices between Arrow Chemical Company and E-Z Chemical.

74. CERCLA § 104(e) response from Arrow Chemical Company dated August 16, 1989.

75. E-Z Chemical acetone drumming reports for Arrow Chemical Company.

76. Receipts, Transactions, Invoices and Bills of Lading between Arrow Chemical Company and customers.

77. CERCLA § 104(e) information request to Arrow Chemical Company dated August 4, 1989.

78. CERCLA § 104(e) information request to Arrow Chemical Company dated May 24, 1993.

79. Dun and Bradstreet report on Chemline Corporation dated July 23, 1993.

80. Handwritten notes by Louis Spinelli (Chemline Corporation).

81. CERCLA § 104(e) response from Chemline Corporation dated August 29, 1989 with enclosures of invoices, receipts, transactions, and bills of lading.

82. Receipts, Invoices, Transactions and Bills of Lading between Chemline Corporation and suppliers.

83. Letter from Chemline Corporation to EPA dated May 10, 1989.

84. Chemline Corporation Voluntary Compliance Agreement dated May 22, 1989.

85. CERCLA § 104(e) information request to Chemline Corporation dated August 4, 1989.

86. CERCLA § 104(e) information request to Chemline Corporation dated May 19, 1993.

87. CERCLA § 104(e) response from Chemline Corporation dated July 6, 1993.

88. Handwritten notes by Louis D. Spinelli (Delmarva Incorporated/Chemical, Inc.).

89. Dun and Bradstreet report on Delmarva Chemicals, Inc. dated May 26, 1993.

90. Invoice from E-Z Chemical to Delmarva Chemicals, Inc. for blending of gluconic acid with caustic soda dated February 14, 1984.

91. Receipts, Invoices, Transactions, Bills of Lading, Correspondence, and Sampling Analysis of hydrogen peroxide from Delmarva, Inc./Chemicals.

92. CERCLA § 104(e) response from Delmarva, Inc./Chemicals dated August 13, 1989.

93. Receipts, Invoices, Transactions, Bills of Lading, Correspondence and Sampling Analysis of methylene chloride from Delmarva, Inc./Chemicals.

94. EPA interview with Edmund Zakrocki dated April 20, 1989.

95. CERCLA § 104(e) information request to Delmarva, Inc. dated August 4, 1989.

96. CERCLA § 104(e) information request to Delmarva Chemical, Inc./CTM Delmarva dated May 19, 1993.

ORIGINAL (Red)

97. Letter from Shubert, Bellwoar, Mallon and Walheim, counsel for Delmarva, Inc., to EPA dated July 13, 1993.

98. State of New Jersey, Department of State document, Environmental Chemical Associates Incorporated.

99. Dun and Bradstreet report on Environmental Chemical Associates Incorporated dated May 26, 1993.

100. Receipts, Transactions, Invoices, Bills of Lading, Drumming Logs and Correspondence for Environmental Chemical Associates Incorporated.

101. CERCLA § 104(e) responses from Hood Products, Inc. dated August 9, 1989 and June 3, 1993.

102. Activity Sheet, E-Z Chemical Site, L. H. Richardson, April 21,1989.

103. Bills of Lading and Invoices for ECA during removal action.

104. Environmental Chemical Associates Incorporated Voluntary Compliance agreement dated May 3, 1989.

105. Environmental Chemical Associates Incorporated Consent Agreement and Order dated August 4, 1989.

106. Letter of scope and plan from Environmental Chemical Associates Incorporated to EPA dated August 30, 1989.

107. CERCLA § 104(e) letter to Environmental Chemical Associates dated May 19, 1993.

108. Handwritten notes by Louis D. Spinelli (Globe Paper Company, Inc.).

109. Globe Paper Company, Inc. Dun & Bradstreet report dated May 26, 1993.

110. CERCLA § 104(e) response from Globe Paper Company, Inc. dated August 11, 1989.

111. CERCLA § 104(e) response from Globe Paper Company, Inc. dated June 4, 1993.

112. Invoices and receipts from Globe Paper Company, Inc. to Stokes Div. Pennwalt Corp.

113. CERCLA § 104(e) information request to Globe Paper Company dated August 4, 1989.

114. CERCLA § 104(e) information request to Globe Paper Company

dated May 19, 1993.

115. Letter and additional response to request for information from Wimmer, Baldwin Associates, Inc. for J.M.B. Industries dated July 15, 1993.

116. J.M.B. Industries, Inc. Dun & Bradstreet report dated July 23, 1993.

117. Chemsource, Inc. Dun & Bradstreet report dated July 23, 1993.

118. Handwritten notes by Louis D. Spinelli dated July 23, 1993 (J.M.B. Industries, Inc.).

119. CERCLA § 104(e) response from Wimmer Baldwin Associates, Inc. for J.M.B. Industries dated June 2, 1993.

120. Invoices and drumming reports between E-Z Chemical and J.M.B. Industries (Chemsource, Inc.).

121. Results of Analytical Testing on Chlorinated & Fluorinated Products dated August 30, 1989.

122. Letter from J.M.B. Industries to EPA dated May 12, 1989.

123. J.M.B. Industries Voluntary Compliance Agreement dated June 7, 1989.

124. Project Update from EPA Paul MacPherson, J.M.B. Industries dated August 3, 1989.

125. Letter from EPA to J.M.B. Industries dated November 6, 1989.

126. CERCLA § 104(e) information request to J.M.B. Industries dated May 19, 1993.

127. Kessler Chemical Inc. Dun & Bradstreet report dated July 12, 1993.

128. CERCLA § 104(e) response from Kessler Chemical, Inc. dated October 9, 1989.

129. Secrecy Agreement between E-Z Chemical, Fred Kissinger and Kessler Chemical, dated December 1, 1983.

130. Instructions regarding preparation of D-10 from Kessler Chemical to E-Z Chemical dated December 1, 1983.

131. Invoices, Receipts, Bills of Lading, Drumming Reports and Communication between E-Z Chemical and Kessler Chemical relating to formulation of D-10.

132. Invoices, Receipts, Bills of Lading, Drumming Reports and Communication between E-Z Chemical and Kessler Chemical and Trimont Chemical relating to phenol.

133. Invoices, Receipts, Bills of Lading, Drumming Reports and Communication between E-Z Chemical and Kessler Chemical and Moroso Performance relating to aniline.

134. Invoices, Receipts, Bills of Lading, Drumming Reports and Communication between E-Z Chemical and Kessler Chemical.

135. Bills of Lading, Kessler Chemical, for products removed during EPA removal action.

136. Letter from Kessler Chemical to EPA dated April 14, 1989.

137. Kessler Chemical Voluntary Compliance Agreement dated April 19, 1989.

138. CERCLA § 104(e) information request to Kessler Chemical dated August 9, 1989.

139. CERCLA § 104(e) information request to Kessler Chemical dated May 24, 1993.

140. CERCLA § 104(e) nudge letter to Kessler Chemical dated July 16, 1993.

141. Letter from Kessler Chemical to E-Z Chemical dated April 10, 1986.

142. Invoice #08763 from E-Z Chemical to Kessler Chemical dated December 10, 1988.

143. State of New Jersey Department of State document dated June 17, 1993.

144. Dun & Bradstreet report on KRC Research Corp. dated June 1, 1993.

145. CERCLA § 104(e) response from KRC Research Corp.

146. Invoices from E-Z Chemical to KRC Research Corp.

147. CERCLA § 104(e) response from KRC Research Corp. dated August 10, 1989.

148. CERCLA § 104(e) information request to KRC Research Corp. dated August 4, 1989.

149. CERCLA § 104(e) information request to KRC Research Corp. dated May 24, 1993.

ORIGINAL (Red)

150. Dun & Bradstreet report on Morgan Materials, Inc. dated July 14, 1993.

151. Morgan Materials Voluntary Compliance Agreement dated May 27, 1989.

152. CERCLA § 104(e) response from Morgan Materials dated June 26, 1993.

153. CERCLA § 104(e) response from Morgan Materials dated August 14, 1989.

154. Morgan Materials Bills of Lading from EPA removal action.

155. CERCLA § 104(e) information request to Morgan Materials dated August 4, 1989.

156. CERCLA § 104(e) information request to Morgan Chemical dated May 24, 1993.

157. Dun & Bradstreet report on Moroso Performance Products, Inc. dated July 23, 1993.

158. Not used.

159. Not used.

160. Not used.

161. Not used.

162. Dun & Bradstreet report on Puratex Company dated July 23, 1993.

163. CERCLA § 104(e) response from Puratex dated August 16, 1989.

164. CERCLA § 104(e) information request to Puratex dated August 4, 1989.

165. CERCLA § 104(e) information request to Puratex dated May 24, 1993.

166. Letter from Quilan, Dunne, Daily & Higgins for Puratex to EPA dated June 24, 1993.

167. CERCLA § 104(e) nudge letter to Puratex dated July 16, 1993.

168. Not used.

169. Not used.

170. Not used.

171. Not used.

172. Not used.

173. Not used.

174. CERCLA § 104(e) information request to LDR/Puritan dated May 24, 1993.

175. State of New York, Department of State document dated July 15, 1989.

176. Dun & Bradstreet report on Syed Associates dated May 31, 1993.

177. Syed Associates Inventory Lists For Materials at E-Z Chemical.

178. Memo from Site referencing Syed Associates drum pick-up.

179. Bills of Lading for Syed Associates removal of material from Site during EPA action.

180. Syed Associates Voluntary Compliance Agreement dated April 26, 1989.

181. Letter to Syed Associates from EPA dated April 27, 1993.

182. CERCLA § 104(e) information request to Syed Associates dated August 4, 1989.

183. CERCLA § 104(e) information requests to Syed Associates dated October 5, 1989.

184. CERCLA § 104(e) information request to Syed Associates dated May 19, 1993.

185. CERCLA § 104(e) nudge letter to Syed Associates dated July 16, 1993.

186. Notes on Trimont Chemicals Inc. by Louis D. Spinelli.

187. Dun & Bradstreet report on Trimont Chemicals Inc. dated July 23, 1993.

188. CERCLA § 104(e) response from Trimont Chemicals Inc. dated October 17, 1989.

189. Fax of inventory on Site from Trimont Chemicals to EPA.

190. Trimont Chemicals Voluntary Compliance Agreement dated May 17, 1989.

Original (Red)

191. CERCLA § 104(e) information request to Trimont Chemicals Inc. dated August 4, 1989.

192. CERCLA § 104(e) nudge letter to Trimont Chemicals Inc. dated October 10, 1989.

193. CERCLA § 104(e) information request faxed to Trimont Chemicals Inc. on October 9, 1989.

194. CERCLA § 104(e) information request to Trimont Chemicals Inc. dated May 24, 1993.

195. CERCLA § 104(e) information request to Trimont Chemicals, c/o Pacific Anchor Chemical dated June 8, 1993.

196. CERCLA § 104(e) response from Air Products & Chemicals, Inc. dated June 17, 1993.

197. CERCLA § 104(e) information request to Trimont c/o Norman Beaucamp dated July 16, 1993.

198. CERCLA § 104(e) response from Elf Atochem North America, Inc. dated June 25, 1993.

199. Invoices, Bills of Lading and correspondence between E-Z Chemical and Pennwalt.

200. Phone conversation record between Christopher Thomas and Mel Anne McGeehan, Pennwalt Corp. dated July 24, 1989.

201. EPA interview with Paul Henry, Pennwalt, undated.

202. CERCLA § 104(e) information request to Pennwalt dated August 4, 1989.

203. CERCLA § 104(e) information request to Atochem dated May 24, 1993.

204. Letter from Oxychem Company, Inc. to E-Z Chemical dated July 28, 1986.

205. CERCLA § 104(e) information request to Oxychem dated August 4, 1989.

206. EPA itemized cost summary report for E-Z Chemical dated July 29, 1993.

207. Framework for Analysis of Divisibility of Environmental Harm Claims in CERCLA Cases and Summary of Reported Cases dated April 21, 1993.